



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 13 अगस्त, 2014 / 22 श्रावण, 1936

हिमाचल प्रदेश सरकार

“मज़बूत लोकतन्त्र – सबकी भागीदारी”

निर्वाचन विभाग, हिमाचल प्रदेश सरकार
38-एस.डी.ए. कॉम्प्लैक्स, कसुम्पटी, शिमला-171009

अधिसूचना

दिनांक : 12 अगस्त, 2014

संख्या: 3-40/2014-ई0एल0एन0-3636.—संख्या 3-40/2014-ई.एल.एन.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि0प्र0-वि0स0 (3/2013)/2014, दिनांक 25 जुलाई, 2014 तदनुसार 3 श्रावण, 1936 (शक) जो कि लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत

निर्वाचन आयोग, 2013 की निर्वाचन अर्जी संख्या 3 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के दिनांक 24 दिसम्बर, 2013 के निर्णय के सम्बन्ध में है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,
नरेन्द्र चौहान,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

अधिसूचना

तारीख: 25 जुलाई, 2014
3 श्रावण, 1936 (शक)

सं० 82/हि०प्र०-वि०स० (3/2013)/2014.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2013 की निर्वाचन अर्जी संख्या 3 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के तारीख 24 दिसम्बर, 2013 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,
(शंगारा राम),
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan,
Ashoka Road,
New Delhi – 110001

Dated : 25th July, 2014
3 Shravana, 1936 (Saka)

No. 82/HP-LA(3/2013)/2014.—In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission of India hereby publish judgment dated 24th December, 2013 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 3 of 2013.

By order,
SHANGARA RAM,
Principal Secretary,
Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Election Petition No. 3 of 2013

Order reserved on : 11.11.2013

Date of decision : 24.12.2013

Shri Ramesh Chand

..Petitioner.

Versus

Shri Ishwar Dass Dhiman and others

.. Respondents.

*Coram***The Hon'ble Mr. Justice V.K. Sharma, Judge.**¹ Whether approved for reporting? Yes.

Mr. Ajay Sharma, Advocate, for the petitioner.
 Mr. Satya Pal Jain and Mr. R.K. Sharma, Senior
 Advocates, with Mr. Ankush Dass Sood and
 Ms Vidushi Sharma and Ms Anita Parmar Advocates,
 for respondent No.1.

Respondents No. 2 to 4 *ex parte*.**V. K. Sharma, J.**

It is proposed to dispose of issue Nos. 3 to 7 as extracted below, which have been treated as preliminary issues in this election petition filed by the petitioner, runner up candidate, under Sections 80 and 81 of the Representation of People Act, 1951 (in short '1951 Act'), calling in question the election of respondent No.1, returned candidate, from 36-Bhoranj (SC) Constituency of H.P Legislative Assembly held in 2012:-

- “(3) Whether the copy of the petition supplied to respondent No.1 is not a true copy of the original petition and if so, its effect? ..OPR-1.
- (4) Whether the petition has not been properly verified and supported by a proper affidavit in accordance with law and if so, its effect? ..OPR-1.
- (5) Whether the election petition is liable to be dismissed for lack of material facts and particulars? ..OPR-1.
- (6) Whether the petitioner has no cause of action and the petition is liable to be dismissed on this count? ..OPR-1.
- (7) Whether the election petition suffers from mis-joinder of parties and if so, its effect? ..OPR-1.”

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Whereas the petitioner contested the election as a Congress candidate, respondent No.1 was put up by Bhartiya Janta Party (BJP). On counting of votes held on 20.12.2012, respondent No.1, who polled 27333 votes, was declared elected, followed by the petitioner, who got 16918 votes, the margin being 10415 votes.

3. The challenge to the election of respondent No.1 is based solely on the corrupt practice referred to under sub section (7) of Section 123 read with Section 100 (1) (b) and (d) (iv) of the 1951 Act. Both the provisions are extracted below for ready reference:-

Section 123 (7)-

“(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]
- (g) such other class of persons in the service of the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

[(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]”

Section 100 (1) (b) and (d) iv)-

- “(b) b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders Made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.]”

4. It is alleged that “owing to non-compliance with the provisions of the Constitution, Act, Rules and Orders made under the act”, the result of the election insofar as it concerns respondent No.1, has been materially affected in his favour and against the petitioner.

5. It is averred that respondent No.1 was a member of the previous State Legislative Assembly and was Education Minister in the Government run by BJP. His son Dr. Anil Dhiman remained posted as Block Medical Officer at Bhoranj for a period of more than four years till after declaration of the Assembly elections “contrary to the provisions of the Constitution, Act, Rules and Orders made thereunder” which “materially affected the results in favour of respondent No.1 and against the petitioner”. The State Government transferred all the officers out of their home districts during elections, but no cognizance was taken with respect to Dr. Anil Dhiman, “who was holding an important position of Block Medical Officer in Bhoranj constituency”. Under a Block Medical Officer there are 5 Primary Health Centres, 1 Community Health Centre and 33 Sub Centres. Thus, in all there are 10 Doctors and 53 para-medical staff working under a Block Medical Officer. The entire district administration was in the know of the fact that Dr. Anil Dhiman is son of sitting MLA from Bhoranj (36) Constituency, who was Education Minister in the previous Bhartiya Janta Party run Government and was BJP candidate in the current election from that Constituency. No steps were taken to transfer Dr. Anil Dhiman.

6. It is stated that Dr. Anil Dhiman was himself aspirant for BJP ticket from this very Constituency in this election. Based on this averment the petitioner prays that “Judicial notice of the fact can be taken from this statement that for the last four years while serving as Block Medical Officer, Dr. Anil Dhiman was having relations with the public at large and, more particularly, said relations with an eye on the forthcoming Assembly elections and accordingly only said relations were now exploited in favour of his father which, in fact, materially affected the declaration of results, in which respondent No.1 was declared elected.”

7. It is further averred that the district administration was well aware that Dr. Anil Dhiman is on earned leave since the imposition of the Model Code of Conduct. During this period Dr. Anil Dhiman had been in the Constituency only and had been campaigning for his father. “Newspapers cuttings are proof of the same qua opening of office by respondent No.1 for the purpose of campaign, where Dr. Anil Dhiman is present. Further details of his mobile number are much more a proof which establish the fact that Dr. Anil Dhiman was present at different parts of the Bhoranj (36) Constituency and even had been campaigning on phone also during his earned leave period.”

8. According to the petitioner, “being incharge of the Bhoranj Block as Block Medical Officer, Dr. Anil Dhiman was having direct access to all the patients of the Block and, more particularly, through medical staff consisting of ten Doctors and 53 para-medical staff”. The petitioner further submits that “in a rural area, where people have got access only to the doctors for their medical problems, have much more say in their day to day life with respect to dictates of medical staff, more particularly, doctors” and “in this view of the matter, Dr. Anil Dhiman could very well misuse his position to influence the people consisting of about 50000 voters. This, he could have done more because Bhartiya Janta Party candidate was none else than his father. Dr. Anil Dhiman was directly interested party and when he was on earned leave, in fact, had been moving all around to all the Health Centres of the Bhoranj Block to influence the patients and their families.”

9. The petitioner further beseeches “that let District Election Officer i.e. proforma respondent No.7 specifically advert to the issue with respect to the fact that medical facilities to approximately 50000 voters of the Bhoranj (36) Constituency whether is available through the subordinates of a Block Medical Officer or not. It is submitted that families consisting of ten doctors and 53 para-medical staff working directly under the control of a Block Medical Officer for a period of more than four years and above all this when father of said Block Medical Officer was Education Minister in the previous bhartiya Janta Party run Government, one irresistible conclusion, which could be drawn, is that above said all staff along with their families are, in fact, obliged to the Minister, in turn, Block Medical Officer. Not only this, when said persons are obliged having been kept there under the dictates of a Minister, are, in fact, bound to misuse their position to influence approximately 50000 voters directly in contact with them for their medical facilities.”

10. The petitioner further submits that “in view of this aspect only, orders were issued under the provisions of the Constitution, Act and Rules made for the purpose, thereby framing a transfer policy not to keep such officers in District during the enforcement of Model Code of Conduct. Said orders having not been implemented qua Dr. Anil Dhiman and, in turn, the declaration of results is materially affected, more particularly, with respect to casting of votes.”

11. It is further pleaded as under vide paras 8 to 10 of the petition:-

“8. That an RTI activist, Sh. Dev Ashish Bhattacharya, brought this aspect to the notice of proforma respondents, vide his various communications dated 27th/29th October, 2012, 29th/30th October, 2012, 31st October, 2012 and 2nd November, 2012. It appears that thereafter even proforma respondents concluded in their wisdom that posting of Dr. Anil Dhiman in Bhoranj (36) Constituency and furthermore his acts during the period when he was on earned leave, in fact, have prejudiced the casting of the votes in the above said Constituency, passed orders thereby transferring Dr. Anil Dhiman and further issuing directions that he be physically (emphasis laid) sent out of the District and be not allowed to come back during the period of campaigning till the election is over. This proforma respondents ordered, vide communication dated 1.11.2012. It is gainfully submitted here that election campaign came to be stopped from 2.11.2012 and uptil said period Dr. Anil Dhiman was not physically ousted from the Constituency, may be there are orders dated 1.1.2012. From the narration of above facts, two things are clear; (a) that proforma respondents considered and opined that posting of Dr. Anil Dhiman in Bhoranj (36) Constituency during the course of election is in violation of the provisions of the Act, Rules and Orders made thereunder and, thus, only ordered his transfer and sending him physically out of the District, (b) but by that time results of the elections stand materially affected as campaigning came to an end as per dictates of the proforma respondents on 2.11.2012 at 5.00 p.m.

9. That in the case in hand, margin of victory is of 10415 votes and voters approximately influenced owing to posting of Dr. Anil Dhiman, Block Medical Officer, Bhoranj is 50000. In this view of the matter, the declaration of results is materially affected, thus, the present petition.

10. That RTI activist specifically brought to the notice of proforma respondents that irreparable damage has already been done to the free and fair elections in the Bhoranj Constituency, thus, as per him, election should be countermanded. It appears that no decision was taken by proforma respondents upon the said

representations of the RTI activist, which again depicts that proforma respondents have failed to obey the commands of the Constitution, Act, Rules and Orders passed thereunder, thereby making the declaration of results of Bhoranj (36) Constituency to be void.”

12. On the above averments the petitioner has put the following posers vide para 11(a) to (g):-

- ”(a) Whether because of the fact that Dr. Anil Dhiman was not transferred out of Bhoranj Constituency before the imposition of the Model Code of Conduct, more particularly, when officers concerned were aware of the fact that Dr. Anil Dhiman working as Block Medical Officer is the son of Bhartiya Janta Party candidate, Sh. Ishwar Dass Dhiman, who, in the previous Government was Education Minister and Dr. Anil Dhiman being Block Medical Officer, Bhoranj, is able to influence approximately 50000 voters of the Constituency?
- (b) Whether owing to taking of no action with respect to transfer of Dr. Anil Dhiman and shifting him out of Constituency despite matter having been brought to the notice of proforma respondents by RTI activist, further aggravated the position in materially affecting the result of the Bhoranj (36) Constituency?
- (c) Whether because of non-transfer of Dr. Anil Dhiman upto 2.11.2012, the date on which campaigning came to an end, affected free and fair elections, thereby resulting in making the elections of Bhoranj (36) Constituency to be void?
- (d) Whether by issuing orders dated 1.11.2012 thereby transferring Dr. Anil Dhiman and ordering to shift him forcefully out of the Constituency resulted into agreeing with the position now being envisaged by the petitioner and as per petitioner now no further proof is required for the purpose?
- (e) Whether during the period of earned leave, Dr. Anil Dhiman, in fact, exploited his relations having been developed by him for a period of more than four years, by influencing more than 50000 voters of the Constituency, who were to avail medical facilities from the Health Centres, which fall directly under the supervision of Block Medical Officer, Bhoranj, Dr. Anil Dhiman?
- (f) Whether fact publically known that Dr. Anil Dhiman is staying as Block Medical Officer, Bhoranj for the last four years and said time is sufficient to develop relations with the people of Bhoranj Constituency, from where his father and Bhartiya Janta Party candidate, Shri Ishwar Dass Dhiman is Member of legislative Assembly for 25 years and Minister for ten years, in fact, influenced the voters, thereby resulting into the fact that elections of the said Constituency are not free and fair and, in fact, his presence materially affected the declaration of the results?
- (g) Whether violation of orders issued under the provisions of the Constitution, particularly Article 324, read with proviso to Section 15(2) of the Representation of People act, 1951 and provisions of section 13 (CC) of the Representation of People act, 1950 and Section 28A of the Representation of People act, 1951, by proforma respondents with respect to serving of the officers/officials in home districts, vide communication dated 12.9.2012, having been violated and resultantly elections of the Bhoranj (36) Constituency being not free and fair and,

in fact, stand influenced by the relations developed by Dr. Anil Dhiman, being Block Medical Officer, Bhoranj, for the last four years and, more particularly being son of sitting member of Legislative Assembly and Education Minister, in turn, damage to the rival candidates and planks of victory having been got tilted towards his father by unfair means, deprived the sanctity of the free and fair elections?"

13. It is lastly pleaded as under vide paras 12 and 13:-

"12. That as stated supra, Dr. Anil Dhiman actively participated in political activities and this fact is known to the public at large and even at one stage his name was considered for the ticket of Bhartiya Janta Party in place of his father. These facts are being stated by petitioner on the basis of inputs as are obtained from the press clippings of the local newspapers. Even after passing of orders dated 1.1.2012 with respect to transfer of Dr. Anil Dhiman, let respondents explain that who took over at his place. Answer is 'None', meaning thereby Dr. Anil Dhiman continued at the said place even after 2.11.2012.

13. That keeping in view the margin of victory of 10415 votes, it is submitted that just above 5000 votes ought to have made difference and approximately 50000 votes of Bhoranj Constituency were in a position of being influenced directly by Block Medical Officer, in law, it is crystal-clear and can be held without any fear of contradiction that results of Bhoranj (36) Constituency in favour of respondent No.1 are materially affected and are not free and fair, thus, are liable to be declared void, in turn, next candidate i.e. runner-up, petitioner, is liable to be declared elected."

14. On the above averments the following prayers have been made:-

"It is, therefore, respectfully prayed that present petition may very kindly be accepted and declaration of result in favour of respondent No.1 herein as winning candidate made by proforma respondents herein may very kindly be quashed and set aside with further directions to the said respondents to declare petitioner as having been duly elected from Bhoranj (36) Constituency for State Assembly in the elections held on 4.11.2012.

In the alternative, elections of Bhoranj (36) Constituency may very kindly be ordered to be countermanded with directions to the proforma respondents herein to hold fresh election in accordance with the provisions of the Constitution, Act and Rules, to secure the ends of law and justice."

15. The petition is contested by respondent No.1 on preliminary submissions regarding copy of the petition supplied to him not being a true copy of the "original Election Petition" inasmuch as that typed version of pages 29 to 32 of the "original petition" has not been supplied and "it is not signed originally by the Learned Counsel at all the relevant places", as required under Section 81(3) of the 1951 Act and as such liable to be dismissed under Section 86 of the said Act; the petition having not been properly verified and the affidavit also being vague; the allegations in the petition being "vague and uncertain" and not disclosing a concise statement of material facts as required under law and as such cannot be tried; there being "not even a whisper in the entire petition that Dr. Anil Dhiman worked with the 'consent' of the replying respondent or his Election Agent. Consent cannot be presumed but it has to be alleged and proved beyond reasonable doubt like a criminal trial. The grounds which are not alleged cannot be proved. Hence, the election petition deserves to be dismissed with costs as there is no allegation of consent in the petition";

there being no violation of any statutory provision and as such no triable issue in the election petition the same being without any cause of action deserves to be dismissed with costs and misjoinder of necessary parties on the ground that respondents No. 5 to 7 have been wrongly arrayed as such in violation of Section 83 of the 1951 Act. On merits, the averments regarding holding of election and outcome thereof have been admitted. It is denied that there is violation of any legal provision. It is admitted that earlier the replying respondent was an MLA belonging to BJP and had been Education Minister in the Government of Himachal Pradesh. However, it is denied that Dr. Anil Dhiman remained posed as Block Medical Officer at Bhoranj for more than four and half years or any statutory provision has been violated or “he materially affected the results in favour of Respondent No.1”. It is further pleaded that there is no provision under the law to transfer all the officers out of their home districts during election. Rest of the contents of para 4 of the petition regarding Dr. Anil Dhiman are stated to be “irrelevant for the purpose of election petition”, vague and lacking material particulars, hence liable to be deleted. The alleged newspaper cuttings and mobile phone call details have not been enclosed with the petition and as such can neither be looked into nor proved in evidence. According to the replying respondent “In fact, such vague, uncertain and irrelevant allegations are called as fishing inquiry and the same is strictly prohibited in the election law”. Further averments in para 6 of the petition regarding the role of Dr. Anil Dhiman are denied being wrong and lacking in “material particulars, material fact, vague and are presumptory in nature, as such, deserves to be deleted from the petition”.

16. It is further pleaded that the petition does not even mention the names of subordinates, who allegedly were “in fact, obliged to the Minister, in turn, Block Medical Officer”. It is stated that the answering respondent had nothing to do with the averments made in para 8 of the petition regarding role of Shri Dev Ashish Bhattacharya an RTI activist, which even otherwise are irrelevant for the purpose of the election petition. According to the replying respondents “In Himachal Pradesh Assembly elections, victory by 10415 votes amounts to a big victory and it is not a margin victory”.

17. Further averments in para 11 of the reply are to the following effect:

“That Para No. 11 alongwith sub-para (1) to (g) of the Election Petition is wrong and emphatically denied. The documents which are not placed on the record alongwith the election petition and are not duly verified cannot be allowed to be proved and taken on record to fill up the lacuna. The letter dated 12.09.2012 by the Election Commission of India to the Chief Secretary and the Chief Electoral Officer of Himachal Pradesh is advisory in nature. The category of Dr. Anil Dhiman does not fall within the purview of this letter. Even the violation of the same, if any, has no penal consequences. This para 11 alongwith sub-paras (a) to (g) is completely on imaginary and a fishing inquiry which is not permissible under the election law. The allegations leveled in this para and in the petition do not fall within the purview of corrupt practice under Section 123 of the Act or a ground for declaring election void under Section 100 of the Act as there is no allegation of consent of the replying respondent or his election agent. None of the law points as visualized by the petitioner, arises for any consideration by this Hon’ble Court.”

18. It is lastly stated that the election in question “had been very fair and free and there is no ground for interfering with the same. The election petition deserves to be dismissed with heavy costs”.

19. Respondents No. 2 to 4 were proceeded against ex parte vide order dated 3.4.2013.

20. Proforma respondents No. 5 to 7, Chief Election Commissioner, Chief Electoral Officer, Himachal Pradesh and District Election Officer (Deputy Commissioner), Hamirpur, H.P.,

were ordered to be deleted as parties to the present petition vide order dated 13.8.2013 in EMP No. 11001 of 2013.

21. In the replication apart from pleading that “Dr. Anil Dhiman having remained posted for more than four years and even after declaration of the results, having campaigned in favour of his father **with his consent, being present on the dais alongwith his father** at various intervals, materially affected the results in favour of respondent No.1 and against the petitioner”, the petitioner has refuted the stand on behalf of respondent No. 1 and instead reiterated his own case (emphasis supplied).

22. On the pleadings on behalf of the contesting parties, the following issues have been settled, out of which, issues No. 3 to 7 have been ordered to be treated as preliminary issues, as already noticed:-

- “(1) Whether the election of respondent No. 1 is liable to be set aside because of his having committed a corrupt practice *viz* obtaining assistance of his son, Dr. Anil Dhiman “who was holding an important position of Block Medical Officer in Bhoranj constituency”, to further his prospects in the election in violation of Section 123(7) of the Representation of the People Act, 1951? ..OPP.
- (2) Whether the petitioner is entitled to be declared elected in place of respondent No. 1, as prayed for? ..OPP.
- (3) Whether the copy of the petition supplied to respondent No. 1 is not a true copy of the original petition and if so, its effect? ..OPR-1.
- (4) Whether the petition has not been properly verified and supported by a proper affidavit in accordance with law and if so, its effect? ..OPR-1.
- (5) Whether the election petition is liable to be dismissed for lack of material facts and particulars? ..OPR-1.
- (6) Whether the petitioner has no cause of action and the petition is liable to be dismissed on this count? ..OPR-1.
- (7) Whether the election petition suffers from misjoinder of parties and if so, its effect? ..OPR-1.
- (8) Relief.”

23. I have heard the learned Counsel/Senior Counsel for the contesting parties and gone through the records.

24. The parties have relied upon the following case law:-

RESPONDENT No.1

1. **Parkash Chand v. State of Punjab and others**, 1977 Punjab Law Reporter 84;
2. **Jyoti Basu and others vs. Debi Ghosal and others**, 1982 (1) SCC 691;
3. **Azhar Hussain v. Rajiv Gandhi**, AIR 1986 Supreme Court 1253;

4. **Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi**, AIR 1987 Supreme Court 1577;
5. **Narain Chand Prashar v. Prem Kumar Dhumal and others**, AIR 1993 Himachal Pradesh 84;
6. **Dr. Shipra (Smt.) and others vs. Shanti Lal Khoiwal and others**, 1996 (5) SCC 181;
7. **Smt. Vimla Devi v. State of Himachal Pradesh and others**, AIR 1999 Himachal Pradesh 38;
8. **Hari Shanker Jain vs. Sonia Gandhi**, (2001) 8 Supreme Court Cases 233;
9. **Mahendra Pal v. Shri Ram Dass Malanger & Ors.**, JT 2002 (2) SC 396;
10. **Mahender Pratap vs Krishan Pal and others** JT 2002 (10) SC 30;
11. **G. V. Sreerama Reddy and another vs. Returning Officer and others**, 2009 (8) SCC 736;
12. **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, (2009) 9 Supreme Court Cases 310.

PETITIONER

1. **V. Narayanaswamy vs. C. P. Thirunavukkarasu**, AIR 2000 SC 694;
2. **K.K. Ramchandran Master vs. M.V. Sreyamakumar and others**, (2010) 7 Supreme Court Cases 428;
3. **Nandiesha Reddy vs. Kavitha Mahesh**, (2011) 7 Supreme Court Cases 721;
4. **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and others** (2012) 7 Supreme Court Cases 788;

BOTH BY RESPONDENT No.1 AND PETITIONER

1. **V. Narayanaswamy vs. C. P. Thirunavukkarasu**, AIR 2000 SC 694;
2. **K. K. Ramchandran Master vs. M.V. Sreyamakumar and others**, (2010) 7 Supreme Court Cases 428.

25. The principles of law enunciated in the above authorities have been taken into consideration and borne in mind and shall be referred to wherever necessary.

26. For the sake of convenience preliminary issues No. 5 and 6, being interconnected requiring common appreciation of pleadings and law, are taken up together for discussion and decision first.

27. The law relating to 'material facts' and 'full particulars of any corrupt practice' has been succinctly crystallized by the Hon'ble Apex Court in **Virender Nath Gautam vs. Satpal**

Singh and others, (2007) 3 Supreme Court Cases 617, a case arising out of the final judgment and order dated 20.12.2004 of this court in Election Petition No. 2 of 2003, laying down as under vide paras 25 to 36 and 50:-

“25. Before we deal with the contentions of the parties, it would be appropriate if we refer to the relevant provisions of the Act. The Preamble of the Act declares that the Act has been enacted

"to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections".

26. Part I is Preliminary. Part II deals with qualifications and disqualifications for membership of Parliament and of State Legislatures. While Part III provides for issuance of notifications for elections, Part IV relates to administrative machinery for the conduct of elections. Sections 59 and 60 lay down manner and procedure of voting. Section 61 prescribes special procedure for preventing personation of electors. Section 62 relates to right to vote. It is a material provision and may be quoted in extenso;

“62. Right to vote.-(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for the constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police;

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorized to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.”

27. Conduct of elections has been dealt with in Part V. Part VI relates to 'Disputes regarding elections'. Section 80 requires any election to be questioned only by way of Election Petition. Under Section 80A, it is the High Court which can try election

petitions. Section 81 provides for presentation of election petition and prescribes the period of limitation. Section 82 declares as to who shall be joined as respondents to such Election Petition. Section 83 deals with contents of petition and reads thus-

“83. Contents of petition-(1) An Election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

28. Section 100 enumerates grounds for declaring election to be void which inter alia includes improper reception, refusal or ejection of any vote or the reception of any vote which is void or there is non-compliance with the provisions of the Constitution or of the Act or Rules or orders made under the Act. Section 101 empowers the High Court to declare a candidate other than the returned candidate to have been elected. Section 123 declares certain practices as "deemed to be corrupt practices".

29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of 'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary'

or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

32. In the leading case of *Phillips v. Phillips*, (1878) 4 QBD 127 : 48 LJ QB 135, Cotton, L.J. stated:

"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

33. In *Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697 : (1936) 1 All ER 287, Scott, L.J. referring to *Phillips v. Phillips* observed: (ALL ER p. 294)

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4 (see *Phillips v. Phillips*); or 'a further and better statement of claim' may be ordered under Rule 7."

34. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

36. In *Halsbury's Laws of England*, (4th edn.); Vol.36; para 38, it has been stated;

"38. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is

intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at the trial without obtaining the leave of the court."

50. There is distinction between *facta probanda* (the facts required to be proved, i.e. material facts) and *facta probantia* (the facts by means of which they are proved, i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

28. The above interpretation of 'material facts' and 'full particulars of any corrupt practice' referred to in clauses (a) and (b) of sub section (1) of Section 83 of 1951 Act, has also been reiterated in later judgments rendered by the Hon'ble Supreme Court in (1) **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, (2009) 9 Supreme Court Cases 310, (2) **K.K. Ramchandran Master vs. M.V. Sreyamakumar and others**, (2010) 7 Supreme Court Cases 428, (3) **Nandiesha Reddy vs. Kavitha Mahesh**, (2011) 7 Supreme Court Cases 721 and (4) **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and others**, (2012) 7 Supreme Court Cases 788.

29. It shall be pertinent to notice at the very outset that in the first sub para of para 4 of the petition the petitioner has specifically pleaded as under:-

"Petitioner humbly begs to submit that entire District Administration was in know of the fact that Dr. Anil Dhiman is son of sitting Member of Legislative Assembly from Bhoranj (36) Constituency and who was the Education Minister in the previous Bhartiya Janta Party run Government and further was the Bhartiya Janta Party candidate from Bhoranj (36) Constituency. No steps were taken to transfer said incumbent".

30. Para 4 of the petition has been replied by respondent No.1 as under:-

"That Para 4 of the petition is wrong and emphatically denied. There is no provision under the law to transfer all the officers out of their home district during election. Rest of the contents in this para are irrelevant for the purpose of election. This para of the petition is vague and lacks material particulars, hence deserves to be deleted."

31. It is manifest from the perusal of the above reply that respondent No.1 has not specifically denied his relationship with Dr. Anil Dhiman as his son. It being so, the averments to this effect would be deemed to have been impliedly admitted.

32. Gravamen against Dr. Anil Dhiman, who according to the petitioner "was holding an important position of Block Medical Officer in Bhoranj Constituency" and was as such exercising considerable influence in the area on his own and as son of the sitting Minister, is that he himself was an aspirant for the BJP ticket from this very Constituency, remained posted as Block Medical Officer, Bhoranj Block, for the last more than four years upto the end of the election and was

not posted out of the Constituency in violation of the instructions issued by the Election Commission, due to which the result of the election, insofar as it concerns respondent No.1, has been materially affected.

33. As already noticed, challenge to the election of respondent No.1 is based solely on the corrupt practice referred to under sub section (7) to Section 123 read with Section 100 (1) (b) and (d) (iv) of the 1951 Act. Both these provisions also stand already noticed in para 3 of this judgment.

34. What is prohibited under sub section (7) of Section 123 of the 1951 Act is - obtaining or procuring or abetting or attempting to obtain or procure **by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, 'any assistance'** (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and **belonging to any of the classes enumerated therein** from (a) to (h) (emphasis supplied).

35. However, from the perusal of the averments set up in the petition it is not discernible as to under which of the aforesaid classes Dr. Anil Dhiman allegedly falls. In any case, he is not covered under any of the categories (b) to (f) and (h). For want of any supporting material he is also not covered under category (g). As far as category (a) is concerned, the petition lacks in the pleadings worth the name to show that Dr. Anil Dhiman, who was stated to be "holding an important position of Block Medical Officer in Bhoranj Constituency", was a 'gazetted officer'.

36. A bare reading of the averments set up in the petition would go to show that the petitioner has nowhere pleaded that either respondent No.1 or his agent or any other person with his or his election agent's consent was instrumental in obtaining or procuring or abetting or attempting to obtain or procure 'any assistance' from the petitioner, who is not even alleged to be a 'gazetted officer'. It being so, the following averments set up in the replication to paras 1 to 3 of the reply filed on behalf of respondent No.1 alleging implied consent on the part of respondent No.1 cannot be looked into, as having been incorporated in the replication after an objection in that regard was raised by respondent No.1 in the written statement vide para 4 of the preliminary submissions, being a mere afterthought:-

"That the contents of paras 1 to 3 of the Written Statement on Merits so far pertain to records and are admitted, are not denied, the remaining contents are wrong, false, baseless and hence emphatically denied and repudiated. Apathy of the matter is that respondent No.1 has even denied that Dr. Anil Dhiman is his son having not been admitted specifically. Dr. Anil Dhiman having remained posted for more than four years and even after declaration of the results, having campaigned in favour of his father with his consent, being present on the dais alongwith his father at various intervals, materially affected the results in favour of respondent No.1 and against the petitioner".

37. Above all, these averments were incorporated in the replication filed on 2.8.2013, much after expiry of the period of limitation for filing the election petition as provided under Section 81 of the 1951 Act. 38. In order to arrive at the above inference support is drawn from **Hari Shanker Jain vs. Sonia Gandhi**, (2001) 8 Supreme Court Cases 233, wherein it has been laid down as under vide paras 23 and 24:-

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In

other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See *Samant N. Balakrishna, etc. v. George Fernandez*, (1969) 3 SCR 603; *Jitender Bahadur Singh v. Krishna Behari*, (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis*, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. **To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else.** Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings" (emphasis supplied).

39. The same principle of law has also been enunciated in **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, (2009) 9 Supreme Court Cases 310, v ide paras 59 to 61, which are extracted below:-

"59. In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (respondent herein) is bound to substantiate before he can succeed on that charge. **It is also well-settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.**

60. According to the appellant, **in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election-petitioner (respondent herein) and the election petition is liable to be summarily dismissed on that ground** (emphasis supplied).

61. The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of section 83(1)(a) of the Act."

40. Please also see (1) **Daulat Ram Chauhan v. Anand Sharma**, AIR 1984 Supreme Court 621 (para 18), (2) **Harkirat Singh vs. Amrinder Singh**, JT 2005(10) SC 513 (para 30) and (3) **Azhar Hussain v. Rajiv Gandhi**, AIR 1986 Supreme Court 1253 (para 14).

41. Though the petitioner has alleged that Dr. Anil Dhiman being Block Medical Officer was exercising control over 10 Doctors and 53 para medical staff working under him in 5 primary health centres, 1 community health centre and 53 three sub centres, besides patients and their family members visiting those health centres, yet not even a single Doctor or para medical staff or any patient or family member of any patient has been named in the petition, over whom Dr. Anil Dhiman had exercised any influence, whereby result of the election, insofar as it concerns respondent No.1, has been materially affected.

42. The averment in para 7 of the plaint that “above all this when father of said Block Medical Officer was Education Minister in the previous bhartiya Janta Party run Government, one irresistible conclusion, which **could** be drawn, is that above said all staff along with their families are, in fact, obliged to the Minister, in turn, Block Medical Officer”, on the face of it is based on a mere hypothetical premise (emphasis supplied).

43. Furthermore, though the petitioner has alleged that as per news-items Dr. Anil Dhiman was himself an aspirant for BJP ticket, which ultimately was allotted to his father, who contested the election, yet no such news-item has been brought on record in support of the allegation that Dr. Anil Dhiman was present at the time of “opening of office by respondent No.1 for the purpose of campaign”. Even names of the newspapers along with dates, in which such news-items had allegedly appeared have not been stated in the petition. Still further call details of his mobile phone about his movements in the constituency for campaigning while on earned leave have also not been filed.

44. In the entire petition there is no allegation of any overt or covert act of commission or omission against respondent No.1 that he had obtained or procured or abetted or attempted to obtain or procure ‘any assistance’ from his son, Dr. Anil Dhiman, who at the relevant time was posted as Block Medical Officer, Bhoranj Block, who as already observed, is not even alleged or established to be a ‘gazetted officer’.

45. Even otherwise, essential facts such as mode, measure, kind or form, manner, type, date, time, place and persons from whom the actual and specific assistance was allegedly procured have not been stated “to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded”, as held by the Hon’ble Supreme Court in **Azhar Hussain v. Rajiv Gandhi**, AIR 1986 Supreme Court 1253, vide para 14 of the report, which runs as under:-

“14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars?

Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. [(1969) 3 SCR 217 : (AIR 1969 SC 734) – Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi].

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with

a cause of action which will call for an answer from the returned candidate and must therefore be pleaded : [(1972) 2 SCR 742: (AIR 1972 SC 515) – Hardwari Lal v. Kanwal Singh].

- (a) mode of assistance;
- (b) measure of assistance; and
- (c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :

- (a) kind or form of assistance obtained or procured;
- (b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election. [AIR 1972 SC 515]

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [AIR 1972 SC 515].

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. (AIR 1972 SC 515) (supra)

(6) The election petitioner. must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in. the particulars. (AIR 1972 SC 515) (supra).”

46. The allegation in para 6 of the petition that “Dr. Anil Dhiman **could** (emphasis supplied) very well misuse his position to influence the people consisting of about 50000 voters”, besides being conjectural and hypothetical in nature on the face of it appears to be highly exaggerated taking into consideration the specific averments set up vide para 9 of the petition, as re-produced below:-

“That in case in hand, margin of victory is of 10415 votes and voters approximately influenced owing to posting of Dr. Anil Dhiman, Block Medical Officer, Bhoranj is 50000. In this view of the matter, the declaration of results is materially affected, thus, the present petition.”

47. When confronted with the above situation the learned counsel for the petitioner stated at the bar that mention of 50000 voters in these paras of the petition is an inadvertent mistake and in fact it ought to have been 15000 voters. This aspect of the matter also goes to show the lackadaisical manner in which the petition has been drafted. Even if the figure is taken to be 15000, it lacks in material details, as already observed and as such the averments in para 6 of the petition that “in a rural area, where people have got access only to the doctors for their medical problems, have much more say in their day to day life with respect to dictates of medical staff, more particularly, doctors”, are conjectural, hypothetical and general in nature.

48. There is no denying the fact that at no point of time the petitioner had himself objected to the posting of Dr. Anil Dhiman as Block Medical Officer, Bhoranj Block, either prior to

announcement of the election or thereafter during the election process and instead it was one Mr. Dev Ashish Bhattacharya, who is said to be an Right to Information (RTI) activist, who had taken up this matter with the Election Commission by way of RTI applications, pursuant to which Dr. Anil Dhiman was ultimately ordered to be transferred out of the district vide letter dated 1st November, 2012, addressed by the Under Secretary, Election Commission of India, New Delhi to the Chief Electoral Officer, Himachal Pradesh, Shimla, with further direction that he “be physically sent out of the district and not be allowed to come back during the period of campaigning till the poll is over”, in terms of the instructions dated 12th September, 2012, issued by the Election Commission of India, New Delhi to the Chief Secretaries and Chief Electoral Officers of Himachal Pradesh, inter alia Gujarat, followed by letter dated 25th/29th September, 2013, sent by the Chief Electoral Officer, Himachal Pradesh to various authorities, such as Chief Secretary to the Government of Himachal Pradesh etc. etc. mentioned therein.

49. However, the fact remains that in the absence of any allegation that either respondent No.1 was instrumental in getting his son Dr. Anil Dhiman posted as Block Medical Officer, Bhoranj Block or ensuring that he remained posted there even after declaration of the election and imposition of the code of conduct till ultimately he was transferred out of the district, as noticed hereinabove and for the reasons already stated hereinabove to the effect that the petition as far as the same relates to the corrupt practice under sub section (7) of Section 123 of the 1951 Act lacks in material facts viz. status of Dr. Anil Dhiman as a ‘gazetted officer’ and ‘consent’ on the part of respondent No.1 or his election agent and as such does not disclose any cause of action, this aspect of the matter, to my mind, is of no legal consequence in the given facts and circumstances of the case.

50. The above discussion brings me to hold that the petition which is solely based on the corrupt practice referred to under sub section (7) of Section 123 of 1951 Act is lacking in material facts and is accordingly liable to be dismissed without being put to trial.

51. Both the issues are decided accordingly.

Issue No. 3

52. According to respondent No.1 copy of the petition supplied to him, which along with notice of the petition issued to him has been brought on record by him in the file containing the documents filed on his behalf, is not a true copy of the petition. On comparison of the two, what emerges is that whereas in the index to the original petition the document added at the top above Sr. No.1 as ‘1A Receipt of Security’, is not mentioned in copy of the index supplied to respondent No.1. Secondly, in copy of form under Order 7, Rule 14 (1) CPC (wrongly mentioned as Order 7, Rule 13 (1) CPC) at page 14 of the file containing list of documents filed on behalf of respondent No.1, date of filing, which in the original form is given as 29.01.13, does not find place. And lastly whereas in the copy of the complaint dated 31.10.2012, sent by said Sh. Dev Ashish Bhattacharya to the Chief Election Commissioner of India, New Delhi, there is cutting and an illegible overwriting in the last line of the first page in the end, which is missing in the copy supplied to respondent No.1. These additions/omissions being of insignificant nature have no bearing, whatsoever, in the given facts and circumstances of the case and more so when copy of the receipt showing deposit of security of ` 2000/- at the time of filing the petition, does not form part of the petition and as such was not required to be supplied to respondent No.1. **C.P. Joshi vs. Kalyan Singh Chouhan & Anr.**, AIR 2010 Rajasthan 100, relied upon.

53. A perusal of the copy of the petition supplied to respondent No.1 would go to show that though the same has been signed by the petitioner on each page, yet without stating the same to be a true copy of the petition. However, it would also not make any difference in the given facts

and circumstances of the case. Please see **Kanak Vardhan Singhydeo vs. Sri Bibekananda Meher and others**, AIR 1991 Orissa 231, head note (c).

54. Accordingly the issue is held in negative.

Issue No.4

55. The manner in which the pleadings are required to be verified is set out under Order 6, Rule 15, which reads as under:-

“15. Verification of pleadings

- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be varied at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.
- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

¹[(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.]”

56. In the present case the petition has been verified as under:-

“I Ramesh Chand, s/o Shri Chenu Ram, he above named petitioner, do hereby solemnly affirm and declare on oath that the contents of paras 1 to 16 of this petition are true and correct to the best of my knowledge and belief and nothing material has been concealed therein.”

57. A perusal of the above verification would go to show that all the paras thereof from 1 to 16 have been stated to be true and correct to the best of knowledge and belief of the petitioner, but, according to respondent No.1, it is not shown as to how the petitioner could have derived knowledge and belief about the averments set up in all the paras of the petition from his personal knowledge and belief and more so when from the very nature of the information, the same is based on outside sources and not from personal knowledge and belief of the petitioner. However, in this regard suffice it to say that this contention of respondent No.1 does not deserve any favorable consideration at this state of the proceedings. Verification of the replication also stands on the same footing.

58. As per Rule 94A of the Conduct of Election Rules 1961, an affidavit in support of election petition is required to be in Form 25, which is as under:-

“Form 25

(see rule 94A)

AFFIDAVIT

I,, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati (respondent No..... in the said petition) make solemn affirmation/oath and say-

(a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of* and the particulars of such corrupt practice mentioned in paragraphs..... of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphsof the said petition about the commission of the corrupt practice of* and the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the Schedule annexed thereto are true to my information:

(c)

(d)
etc.

Signature of deponent

Solemnly affirmed/sworn by Shri/ Shrimatiatthis..... day of 20.....Before me, Magistrate of the first class/ Notary/Commissioner of Oaths.

*Here specify the name of the corrupt practice.”

59. The affidavit in support of the petition contains the following recitals vide paras 1 and 2:-

“1. That the accompanying Petition has been drafted at my instance and under my instructions and the contents of paras 1 to 16 of the same are true to the best of my personal knowledge and belief and nothing material has been concealed therefrom.

2. That the contents of this affidavit of mine are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.”

60. As far as the affidavit is concerned, it shall also be governed by the same reasoning as adopted in respect of verification of the petition and the objection raised in this regard can also not be adjudicated upon at this stage of the proceedings.

61. In view of the above findings on issues No. 5 and 6, the petition is held to be lacking in material facts, as required under Section 83 (1) (a) of the 1951 Act and as such does not disclose any cause of action and is accordingly dismissed with costs of ` 25,000/- (rupees Twenty Five thousand).

62. Let follow up action in terms of Section 103 of the Representation of People Act, 1951, read with Rule 28 of the ‘Rules of Procedure and Guidance in the matters of trial of Election Petitions under Part-VI of the Representation of People Act, 1951’ as amended, contained in Appendix-II to ‘the High Court of Himachal Pradesh Original Side Rules, 1997’, be taken by the Registry forthwith.

By order,
Sd/-
(V.K. SHARMA)
Judge.

December 24, 2013
(lsp)

“मज़बूत लोकतन्त्र – सबकी भागीदारी”

निर्वाचन विभाग, हिमाचल प्रदेश सरकार
38-एस.डी.ए. कॉम्प्लैक्स, कसुम्पटी, शिमला-171009

अधिसूचना

दिनांक: 8 अगस्त, 2014

संख्या 3-40/2014-ई0एल0एन0-3615.—संख्या 3-40/2014-ई.एल.एन.— भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि0प्र0-वि0स0 (2/2013)/2014, दिनांक 25 जुलाई, 2014 तदानुसार 3 श्रावण, 1936 (शक) जो कि लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2013 की निर्वाचन अर्जी संख्या 2 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के दिनांक 1 जनवरी, 2014 के निर्णय के सम्बन्ध में है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,
नरेन्द्र चौहान,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

अधिसूचना

तारीख:- 25 जुलाई, 2014
3 श्रावण, 1936 (शक)

सं0 82/हि0प्र0-वि0स0 (2/2013)/2014.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2013 की निर्वाचन अर्जी संख्या 2 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के तारीख 1 जनवरी, 2014 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,
शंगारा राम,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan,
Ashoka Road,
New Delhi – 110001

Dated : 25th July, 2014
3 Shravana, 1936 (Saka)

No. 82/HP-LA(2/2013)/2014.—In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission of India hereby publish judgment dated

1st January, 2014 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 2 of 2013.

By order,
SHANGARA RAM
Principal Secretary,
Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Election Petition No. 2 of 2013
Order reserved on: 28.11.2013
Date of decision : 09-01-2014

Shri Kuldeep Singh Pathania

..Petitioner.

Versus

Shri Bikram Singh Jaryal and others

.. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Sharma, Judge.

1 Whether approved for reporting? Yes.

Mr. Anand Sharma, Advocate, for the petitioner.

Mr. Satya Pal Jain, Senior Advocate, with Mr. Ankush Dass Sood ,
Advocate, for respondent No. 1.

Mr. Parmod Thakur, Addl. Advocate General with Mr. Kush
Sharma, Dy. Advocate General, for respondent No. 2.

Mr. Vijay Pal, Advocate vice Mr. Sandeep Sharma, Assistant
Solicitor General of India for respondent No. 3.

V.K. Sharma, J.

The present order shall dispose of issue Nos.2 to 5, as extracted below, which have been treated as preliminary issues in this election petition filed by the petitioner, runner up candidate, under Sections 80, 80A and 81 read with Section 100 of the Representation of the People Act, 1951 (in short 'the 1951 Act'), calling in question the election of respondent No.1, returned candidate, from 5-Bhattiyat Assembly Constituency of H.P. Legislative Assembly held in 2012:—

1. Whether reporters of Local Papers may be allowed to see the judgment? Yes.

- (2) Whether the election petition is liable to be dismissed in limine for lack of material facts and particulars, as alleged ? ...OPR-1.
- (3) Whether the election petition is not maintainable for want of any cause of action, as alleged ? ...OPR-1.
- (4) Whether the election petition and the accompanying annexures have not been verified in accordance with law and if so, its effect ? ...OPR-1.
- (5) Whether the election petition is bad for mis-joinder of parties and is liable to be dismissed on this count? ...OPR-1.

2. The petitioner after stating his educational, professional and political credentials has averred that in 1985, he was elected to the State Legislative Assembly on Congress ticket. Thereafter, he was re-elected as an MLA in 1993 and 2003 as an independent candidate. In 2007, he was again re-elected as MLA for the 4th time. As an MLA, he remained Chairman of various House/Apex Govt. Committees and remained Chairman, State Finance Commission from 2003 to 2007. However, according to him, he lost 2012 election “unfortunately due to the malafide attitude of the Presiding Officers appointed to conduct the election and also with due and active connivance of the respondents, suffered a defeat by just a nominal margin of 111 votes only.”

3. It is averred that consequent upon issuance of the requisite notification by the Governor, Himachal Pradesh, in the month of October 2012, for holding general election to the State Assembly, the Election Commission of India vide notification issued under Section 80 of the 1951 Act, fixed the following election schedule:—

Sr. No.	Poll Events	Dates (all 68 ACs)
1.	Issue of notification	10.10.2012 (Wednesday)
2.	Last date for making nominations	17.10.2012 (Wednesday)
3.	Scrutiny of nominations	18.10.2012 (Thursday)
4.	Last date of withdrawal of candidature	20.10.2012 (Saturday)
5.	Date of Poll	04.11.2012 (Sunday)
6.	Counting of votes.	20.12.2012 (Thursday)
7.	Date before which election process shall be completed	24.12.2012 (Monday)

4. As many as six candidates including the petitioner being Congress candidate and respondent No.1 sponsored by Bhartiya Janta Party (BJP) fought the election. Whereas respondent No.1 who got 18098 votes won the election, the petitioner polled 17987 votes, the margin being 111 votes. One of the two independent candidates namely, Sh. Bhupinder Singh Chauhan scored 9870 votes. The score of others was in hundreds, the highest being 960. Sh. Kalu Ram, who was a candidate of Bahujan Samaj Party (BSP) got 482 votes, Ms. Sudesh Kumari, who was put up by Communist Party of India (CPI) polled 960 votes and the other independent candidate, Sh. Sushil Kumar Dhiman received 549 votes.

5. On the basis of certified copies of the relevant documents received by the petitioner from the office of SDO (Civil)-cum-Returning Officer, Bhattiyat, District Chamba through his agent, Sh. Rajeev Kaushal, the following “violations” enumerated vide paras 5 to 12 of the petition, were allegedly committed by the concerned officials deputed by respondent No.2, the Returning Officer, during the course of election process:—

“5. That since there were number of violations committed during the course of the election process by the concerned officials i.e. respondent No. 2 deputed to conduct the election, more especially at polling station No. 92 (Kamla). During the counting of the votes, it was noticed that in the above said polling station there were difference in the votes casted and votes recorded in the EVM (machine). The polled votes were in 518 in numbers but in the EVM (Machine) these were recorded 519 at the rate of 78.60% out of the total votes of 659 as per the voter turn out report for polling station 92-Kamla, which shows the difference of 1 vote against the polled votes, the copy of the same difference of 1 vote against the polled votes, the copy of the same is annexed as Annexure P4. It is pertinent to mention here that while issuing a list of electorals by the office of Electoral Registration Officer, SDM, Bhattiyat vide dated 1.1.2013 the voter strength of booth No. 92 (Kamla) has been mentioned as 651, the copy of the same is annexed as Annexure P-4/1 whereas as per Annexure P-4 (Form 17-C) the total voter which have been mentioned by the Presiding Officer by his own hand is shown as 659. There is no explanation how the discrepancy is being shown in Annexure P-4 and P-4/1.

6. That the petitioner immediately raised objection in writing on 20.12.2012 when the counting was being held and submitted that this is against the provisions of election process and re-polling in all the polling stations in respect of Bhattiyat may be ordered by the Returning Officer, Bhattiyat Chamba. The copy of the objections raised by the petitioner is annexed herewith as Annexure P-5 for the kind perusal of this Hon’ble Court. The petitioner has specifically pointed out that as per Section 100 clauses 2(b), (d) (ii) (iii) and (iv) the election can be declared void, the detail of the provision is mentioned as below:—

“Section 100 of the Representation of the People Act, 1951, it is specifically mentioned in clauses 2(b) and (d) sub section (ii), sub-section (iii) which is as follows:

(b) That any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;

(d) (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent;

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void.”

Thus, from the above, it is abundantly clear that there had been improper reception of vote which is void. In the present case 519 votes have been polled as displayed by control unit on pressing total button against 518 votes polled in the control unit as per Form 17-C in polling station No. 92 (Kamla). The observation of the Presiding Officer that a lady during early hours at 11.30 a.m. of polling came to the polling station and she casted her vote in double when the button for ballot was Okayed and at the same

time she went off from the polling station does not contain any reasons to observe the same. The objection raised by the petitioner did not take the decision seriously by the respondent No. 2 and ignored the observation made by the Observer who has particularly mentioned that mistake was committed at serial Nos. 229 and 230. Had it been any fairness in the mind and working of the respondent No. 2, the vote casted by the alleged lady could have been cancelled and should not have been considered as premium to the illegality because nobody has given right to cast vote two times in India. There is a system of one person one vote right from down to top. Thus, ignoring the objection raised by the petitioner was unjust and unfair only because of the fact that respondents No. 1 and 2 were actively in connivance with each other and intentionally wanted to cause loss to the petitioner.

7. That there was another violation committed during the process of the election to the effect that as many as 30 declaration forms i.e. Form 13-A accompanying the ballot papers were found invalid in the re-counting and scrutiny of the postal ballot papers which is a grave mistake in the counting process of the postal ballot papers whereas as per the law only those ballot papers were to be put for counting at the first stage which accompany the valid form 13-A which is a declaration form. That due to the grave mistake in the counting process of the postal ballot papers when the candidate-wise counting of the postal ballot papers have been done which vitiated the whole counting of election process and also caused grave suspicion. The objections were raised by the petitioner in writing on 20.12.2012 to the Returning Officer, Bhattiyat and it was also requested through this objection that on the basis of the above said objection the result of 5-Bhattiyat Assembly Constituency be with-held in the interest of justice and re-polling be done in the Constituency. The copy of the complaint/objection raised dated 20.12.2012 is annexed herewith as Annexure P-6 for the kind perusal of this Hon'ble Court.

8. That the petitioner had raised the objection to the extent that the voters have not properly written their names and addresses in the declaration and have also not put initials. Further the objection raised that in 18 polling booths which are found without SMOs in the declaration form (13-A) are prima-facie invalid. But those objections were decided by the Returning Officer on 20.12.2012 illegally and without giving any reasons and explanation that under what circumstances the orders are passed for admitting the same. The copy of the order is annexed as Annexure P-7 for the kind perusal of this Hon'ble Court.

9. That once again the petitioner raised on objection/complaint to the Returning Officer, 5-Bhattiyat Assembly Constituency dated 20.12.2012 with respect to the counting process of EVM's and postal ballot papers whereby the difference in total polled votes in the EVM at booth No. 92 (Kamla) and counting process of postal ballot papers being suspicious and invalid declaration being wrongly counted and unsigned and un-numbered declaration form No. 13-A.

Then on the very application, the Returning Officer has passed the orders to the following effect:—

“As far as para No. 1 is concerned, the matter is already in the notice of the undersigned and further referred to E.C.I. for necessary directions. The matter will be dealt with accordingly.

The matter of postal ballots counting has also enquired into and due to the narrow margin of votes between top two candidates, the mandatory provisions of

re-verification was carried out in the presence of their representing contesting candidates and their agents VIPs whether valid, invalid etc. was taken one by one and objections were redressed accordingly to the satisfaction of the candidate i.e. election agent following due process of procedure laid down by the E.C.I.

Hence, no further inquiry is required and the objections stand disposed of.”

The aforesaid orders passed by the Returning Officer neither supported by any reason nor any provision and it is a one sided order passed with malafide intention and the objections were decided without following the provisions of law and the reference made to the Election Commission of India as the Returning Officer itself mentioned in the order and thus the same was passed in haste manner for no reasons. The copy of the same is annexed herewith as Annexure P-8 for the kind perusal of this Hon’ble Court.

That in similarly situated situation the Secretariat of Election Commission of India has dealt with the matter with respect to the General Election of Punjab Legislative Assembly 2012 and has ordered re-poll. The short reference in detail is mentioned below:—

“With reference to your letter No. Elec.2012/R- 2301 dated 31.1.2012 on the subject cited above, I am directed to state that on the basis of Returning Officer’s report and also report of the Observer and after taking all materials circumstances into account, the Commission, hereby, declares under Section 58 (2) of the Representation of the People Act, 1951, the poll taken on 30th January, 2012 (Monday) at polling station No.76-Govt. Elementary School (Boys), Sharipura, Golden Avenue (Left Side) of 18-Amritsar East Assembly Constituency to be void and appoints 2nd February, 2012 (Thursday) as the date and fixes the hours from 8.00 a.m. to 5.00 p.m. for taking fresh poll at the said polling station in accordance with the Commission’s instructions contained in Chapter XIII of Hand Book for Returning Officers. Give wide publicity in polling areas concerned and also political parties and contesting candidates shall be informed in writing.”

The copy of the orders dated 31st January, 2012, passed by the Secretariat of the Election Commission of India, through its Secretary, is annexed as Annexure P-9 for the kind perusal of this Hon’ble Court.

In the present petition, there were 519 votes which were polled as displayed by the control unit on pressing total button against 518 votes polled in the control unit as per form 17-C in polling station No.92 (Kamla) which clearly shows that there had been improper reception of vote which as per provision of the Representation of People Act mentioned above, is void. In polling station No. 92 (Kamla) as per Annexure A-1, Presiding Officer stated that a lady during early hours at 11.30 a.m. of polling came in the polling station and she casted her vote two times when the button for valid vote was okayed and at the same time she left the polling station. At the same time, the matter was also brought to the notice of the Observer and the Observer inspected the mistake committed at serial No.229 and 230. The Observer also did not take any steps such as cancellation of that vote or order of re-polling. This shows that the reception of vote as per the provisions mentioned in Section 100(d) (iii) of the Representation of People Act is a void and thereafter complaint in this regard was also made to the Returning Officer, Bhattiyat.

10. That as submitted above, the matter was also reported and came to the knowledge of the person deputed by the Election Commission of India (Observer) when he visited the polling station and in these circumstances it was necessary to order re-polling in this polling booth immediately which has not been ordered inspite of the complaint made in this behalf on the spot which has also vitiated the entire election process. In addition to this, the possibility that the EVM had been tampered with or there had been bogus voting by the returned candidate or his agent or any other person with his connivance which cannot be ruled out.

It has also come to the knowledge of the petitioner when the counting was being taken place regarding the discrepancy of votes in EVM machine then immediately the petitioner had moved an application on 20.12.2012 raised the objections, but the Returning Officer did not take any notice on this application. Then again application was moved raising the same objections vide Annexure P-6 and the Returning Officer passed the orders with respect to the discrepancy in EVM machine showing 519 votes instead of 518 votes and said that this objection has been referred to the Election Commission of India (E.C.I. respondent No.3) and after the receipt of the decision from the E.C.I., the matter shall be dealt with accordingly. But as per the information gathered from the office of the Returning Officer and also after obtaining the relevant documents from the office no such decision has been taken by the Election Commission of India till date as per the records available with the petitioner which is being filed along with this petition. Had the decision been taken by the Election Commission of India on the basis of the reference made by respondent No.2 on the basis of the application moved on 20.12.2012 the return of the result would have been different i.e. the election would have been declared void because as per the provisions of law mentioned in the Representation of the People Act, 1951 and its enabling provisions clearly show that illegal reception or rejection of vote will amounts to void, so this clearly show that there was a grave connivance between the respondents No.1, 2 and 3 which have causes a grave loss to the return of the result which has affected the petitioner at large.

11. There is another ground which vitiates the election as the counting has not been conducted in a true spirit and in accordance with the provisions and also against the factual position. As per the postal ballot polled by the employees received from the employees shown as $638+59=697$ as per the details mentioned in Annexure P-10 dated 20.12.2012. But as per the proceedings of reverification dated 20.12.2012, the total postal votes if calculated comes to 597, the copy of the same is annexed as Annexure P-11 and the final result sheet prepared by the Returning Officer is annexed as Annexure P-12. Thus, there is a difference of 100 postal ballots which were received if the Annexures P-10, P-11 and P-12 is compared. The same factual position can be noticed from the final result sheet on Form No.20 is also being attached with Annexure P-12 in order to complete the detail figure. For more facilitation of this Hon'ble Court, the following table is prepared for clarification:

Annexure No.	Total postal ballot received from employees.	Rejected votes	Difference of votes
P-10	697	—	—
P-11	597	7 or 14	590 or 583
P-12	597	14	583
P-13	527-633	—	—
Difference between P-10 and P-11			100 (107 or 114)
Difference between P-10 and P-12			100
Difference between P-10 and P-13			170 or 64

12. That as per the postal ballot polled by the employees and counted regarding the number of postal ballot received from the employees by post comes to 527 as per column No.9 (endorsement No.3207) and vide endorsement No.3208 dated 20.12.2012, the total difference of ballots comes to 170 about which no decision whatsoever has been given by the respondent No.2 with respect to the rejection or acceptance which clearly shows grave connivance between the respondents No.1 and 2 by taking unilateral decision ignoring such a huge bunch of voters/ballot papers which clearly affect the return of the election so far as the margin of petition as well as respondent No.1 is concerned.

The number of postal ballot received from the service voters as per column No. 4 delivered voters comes to 59 returned undelivered 297. So far as endorsement No. 3207 dated 20.12.2012 is concerned, the postal of service electorals (59 voters) are concerned, the Returning Officer (SDM) has given a note that we are not able to ascertain it whether it is of service electorals or non-service electorals since some of the envelope does not have any seal of the post office where from they are dispatched, however, the pink ballot envelope with seal of post office are being located and accordingly mentioned in the above proforma. This cannot be ground for noncounting of these 59 votes of service electorals. Moreover, there is nothing in Annexures P-13 & P-14 (endorsements 3207 and 3208) to show why remaining 41 votes were not counted and why only 527 votes have been counted while 697 postal ballots were polled by the employees. There is a clear difference of 170 postal votes which remained unexplained. This has also vitiated the entire election process because as mentioned above, the process adopted being void as per Section 100 sub section (d) (iii) of the Act.

So far as rejection of 14 votes out of polled votes 597 are concerned, the same have been rejected wrongly and against the rules. So far as the factual position with respect to the votes casted 519 and actual counted 518 with difference of one vote is concerned, this position has already been admitted by the employees i.e. officers on polling duty and the same information is received by the petitioner vide Annexures P-15/1 to P-15/8. The certificate issued by the office of Gram Panchayat, Kamla and the order passed by the Returning Officer vide order dated 5.11.2012, is based on the admitted facts and is an unilateral decision without affording any opportunity to the petitioner and permitting the election process to continue, vitiates the election process and requires the election to be declared void and final declaration report on the discrepancy is contrary to the provisions of law and unilateral and void as the same has been made without following the process of law. That it is further respectfully submitted that as per the fundamental law of the land that the question can only be decided by adjudicatory forum here in this case is the Election Commission of India.”

6. According to the petitioner, in view of the above “violations”, the result of the election has been materially affected, which is challenged by him on the following grounds vide para 13(i) to (vii):—

“13. That the above said facts and circumstances clearly show that the result of the election has materially been affected and is apparent from the record that the provisions of the Act and the Rules have not been taken into consideration while holding the process of election. Hence the petitioner assails the same on the following grounds inter alia:

- (i) That it is not understood when it has specifically been mentioned in the Act while dealing with provisions of Section 100 sub section 2(d) (ii), (iii) of the

- Representation of the People Act, 1951, it is specifically mentioned in Clause 2(d) (iii) that improper reception, refusal or rejection of any vote or the reception of any vote, which is a void and the election official i.e. respondent No.2 were well aware of the fact that once the voter has casted vote two times, it could not have been considered. It is a bare violation of the provisions as mentioned above, which mandates the election to be void. It is not understood that why such a legal and valid objection raised by the petitioner has been ignored for no reason at all and elections have been declared against the provisions of law.**
- (ii) That it is not understood that when respondent No.2 himself has mentioned on the application moved by the petitioner vide Annexure P-8 raising the objections and on that very application the respondent No.2 has passed the orders whereby objection No.1 has been stated to be referred to the office of respondent No.3, Election Commission of India, which has not been decided as yet to the knowledge of the petitioner and how and on the basis decision of the second objection which is also illegally decided has passed the orders vide Annexure P-13/9.**
 - (iii) That respondent No.2, in connivance with respondent No.1, has illegally brushed aside the admissions made by the officials of respondent No.2, who were deputed to conduct the election process to the effect that the mistake has been committed by them and have given in writing vide Annexures P-13/1 to P-13/8, still the admission made by the officials concerned has been ignored by respondent No.2 for the reasons best known to him which is illegal and vitiates the election in all manner whatsoever.**
 - (iv) That respondent No.2, in connivance with respondent No.1 did not take into consideration the casting of votes and counting of votes, there is a lot of difference but despite this a document issued by respondent No.2 after taking into consideration of voting process still has been ignored.**
 - (v) That as per the postal ballot polled by the employees and counted regarding the number of postal ballot received from the employees by post comes to 527 as per column No.9 endorsement No.3207 and vide endorsement No.3208 dated 20.12.2012, the total difference of ballots comes to 170 about which no decision whatsoever has been given by the respondent No.2 with respect to the rejection or acceptance. It clearly shows the grave connivance between the respondents No.1 and 2 by taking unilateral decision ignoring such a huge bunch of voters/ballot papers which clearly affect the return of the election so far as the margin of petitioner as well as respondent No.1 is concerned. The number of postal ballot received from the service voters as per column No.4 delivered voters comes to 59 returned undelivered 297. So far as endorsement No.3207 dated 20.12.2012 is concerned, the postal of service electorals (59 voters) are concerned, the Returning Officer (SDM) has stated in the note that we are not able to ascertain it whether it is of service electorals or non-service electorals since some of the envelope does not have any seal of the post office where from they are dispatched, however, the pink ballot envelope with seal of post office are being located and accordingly mentioned in the above performa. This cannot be ground for non-counting of these 59 votes of service electorals. Moreover, there is nothing in Annexures P-13 & P-14 (endorsements 3207 and 3208) to show why remaining 41 votes were not counted and why only 527 votes have been counted while 697 postal ballots were polled by the employees. There is a clear difference of 170 postal votes which remained unexplained. This has also vitiated the entire election**

process because as mentioned above, the process adopted being void as per Section 100 sub section (d) (iii) of the Act. So far as rejection of 14 votes out of polled votes 597 are concerned, these have been rejected wrongly and against the rules.

So far as the factual position with respect to the votes casted 519 and actual counted 518 with difference of one vote is concerned, this position has already been admitted by the employees i.e. officers deputed for polling duty are concerned and the same information is received by the petitioner vide Annexures P-15/1 to P-15/8. The certificate issued by the office of Gram Panchayat, Kamla and the order passed by the Returning Officer vide dated 5.11.2012 which is based on the admitted facts and is an unilateral decision without affording any opportunity to the petitioner and permitting the election process to continue, vitiates the election process and requires the election to be declared void and final declaration report on the discrepancy is contrary to the provisions of law and unilateral and void as the same has been made without following the process of law.

- (vi) That it is not understood that under what law the Pradhan of the Gram Panchayat was consulted, who has given in writing on behalf of the Panchayat that the officials who have admitted and committed the act illegally should be forgiven. There is no provision in the Act or the Rules to seek the advice of the Pradhan or the Pradhan has any power to interfere in the election process, which is governed by the State as well as Central Government by appointing the qualified persons.
- (vii) That all the decisions have been taken by the respondent No.2 in connivance with respondent No.1 unilaterally without jurisdiction and having no powers to adjudicate the same suo motu.”

7. On the above averments, the following prayers have been made:—

- (i) “The election of the returned candidate i.e. the respondent No.1 from 5-Bhthiyat (District Chamba) Assembly Constituency of Himachal Pradesh Legislative Assembly be declared void ab initio and be set aside.
- (ii) The polling held with respect to the polling station 92 (Kamla) be held void being invalid and re-casting or re-polling may kindly be ordered to be held in the interest of justice and fair play.
- (iii) Cost of the petition be awarded in favour of the petitioner.
- (iv) Any Other or further order which this Hon’ble Court deemed just and proper in the facts and circumstances of the case may kindly be passed.”

8. The petition is contested by respondent No.1 on preliminary objections regarding lack of cause of action; there being no ground for declaring the election to be void under Section 100 of the 1951 Act; the petition lacking in ‘material facts’ and ‘full particulars’; particularly as to in whose favour there had been ‘improper reception, refusal or rejection of any vote or reception of any vote, which was void’ within the meaning of Section 100(d) (iii) of the 1951 Act.; the person exercising dual right of franchise at polling booth No.92-Kamla being supporter of the petitioner himself; lack of pleadings that the alleged “violations” had materially affected the result of the election, insofar as it concerns the returned candidate and “even otherwise margin of victory is 111

votes and even if the benefit of 101 votes is given to the petitioner still the answering respondent will be leading by 10 votes”; the election petition and the accompanying annexures having not been verified in accordance with Section 83(2) of the 1951 Act; copy of the petition supplied to the answering respondent not being a true copy thereof; maintainability on the ground that the petition has not been presented by the petitioner personally before the Authorized Officer of the court as per law; there being no violation of any rule, regulation or provision of the Constitution of India or the 1951 Act and the rules and orders framed/issued thereunder, during polling, counting of votes and declaration of result; the petition is liable to be dismissed in limni with exemplary costs; the prayer in the petition being not in accordance with Section 84 read with Section 101 of the 1951 Act; non-joinder and mis-joinder of parties as per Section 82 of the 1951 Act; there being no additional prayer in terms of Section 84 of the Act ibid and jurisdiction of the court to entertain the petition sans “relief as contemplated under election law.”

9. It is further submitted as under by way of preliminary submissions:—

“That the contents of the Election Petition are denied save and accept (except) where the replying respondent specifically and particularly admits any fact, in the absence of so all contents are deemed to have been denied”

10. On merits, the averments regarding credentials of the petitioner, elections won/lost and the offices held by him, the election schedule and outcome thereof and receipt of copies of the relevant documents by the petitioner through his agent, Sh. Rajeev Kaushal from the office of SDO (Civil)-cum-Returning Officer, Bhattiyat, Chamba have been replied as ‘call for no reply being matter of record’. As regards the averments in para 5 of the petition, it is stated that the same do not in any manner materially affect the result of the election. No averments have been made, as to in whose favour the person casting double vote has exercised his/her franchise or as to how the result of the election has been materially affected. The discrepancy between the EVM record and the record maintained in Form 17-A was in the notice of the Returning Officer and was also brought to the notice of the General Observer. The same was inquired by the Sector Officer, Sh. Amit Dogra and the matter was referred to the Election Commission of India on the same day, that is, 4.11.2012.

11. The issue regarding casting of double vote by one and the same person at polling station No.92-Kamla was addressed by the Returning Officer and decision was taken in accordance with law. A proper and fair inquiry was conducted in the matter and objections were decided in accordance with law in the presence of Counting Observers. The decision so taken is a matter of record. The entire counting process was held in the presence of the contesting candidates and “Form 13A was firstly taken, on a prima facie scrutiny 100 ballot papers were found invalid and were not counted. That after proper inquiry and with the consent and knowledge of all the contesting candidates and under their signature all objections were duly addressed and decided in accordance with law.” It is submitted that the petitioner be put to strict proof. The result was declared with prior permission of the Election Commission of India.

12. Respondent No.2, the Returning Officer has refuted the “violations” alleged by the petitioner in paras 5 to 12 of the petition in the corresponding paras of his reply, which are as under:—

“Para No. 5

The contents of para No.5 are admitted to be correct to the exception of violation committed during the process of election, hence denied. In this regard it is submitted that in the Polling Station No.92-Kamla, the difference in the votes polled or recorded in the EVM and record maintained in Form-17A was in the

notice of respondent No.2. During the visit of Sh. S. Kishore, the General Observer for 5-Bhattiyat Assembly Constituency to the Polling Station No.92-Kamla, this discrepancy was found out and at the same time was telephonically brought to the notice of respondent No.2 by General Observer. Total votes casted were 230 as per EVM and 229 as per the Form- 17A which is the register of voters at the time of visit of the general observer as per the enquiry by the sector officer Sh. Amit Dogra, AE, IPH Chowari and also this fact was further vindicated and verified by the reports and statements of the Polling Agents of the political parties and on the same day the matter was referred to the Election Commission of India vide letter No.SDM/05/BHT-VS-Gen-Electionm/2012 N-3513-15 dated 04.11.2012 through District Election Officer (DC) Chamba, after conducting proper inquiry through the Assistant Returning Officer, Tehsildar Bhattiyat. But the directions from the District Election Officer or Election Commission of India were not received before the counting of votes on 20.12.12.

As per the Annexure of Petition-P/4 and P4/1 form 17C filled by the Presiding Officer is wrong because the total voters according to the Electoral Roll complete with supplements are 651 and not 659 as mentioned in the Form 17-C. This assertion is therefore, admitted.

Para No. 6.

The contents of Para No.6 are admitted to be correct to the extent of raising objections by the Petitioner and other counting agent on the day of counting of votes 20.12.2012 vide Annexure of Petition P-5 and P-8. But it is also submitted that after receiving the objections the replying respondent has conducted the enquiry pertaining to these objections. The inquiry was conducted on the facts, and the objection were decided accordingly vide order dated 20.12.2012 copy of decision as Annexure R2/A, R2/B, R2/B/typed and R2/C. There by the replying respondent has decided the matter as per law and the question of connivance with other respondent does not arise. The above said order dated 20.12.12 relating to the objection raised by the petitioner was decided in the presence of counting observer.

As mentioned further in Para-A lady has casted her vote in double due to the negligence of Presiding Officer 92-Kamla Polling Party No.40 named 1) Rajmal Sharma TGT, GSSS Holi appointed as Presiding Officer 2) Sh. Mahinder Singh DM, Govt. Middle School Tikku, 3) Sh. Veer Singh Work Inspector O/o X.En HPPWD Dalhousie Polling Officer, 4) Sh. Hem Raj JBT, GPS Kurthala BEEO Mehla IInd, 5) and Sh. Sushil Kumar Reserve Polling Officer were deputed on that day 04.11.2012 by the respondent no.2 for smooth conduct of election.

As per inquiry made by Sh. Bal Krishan Choudhary, ARO Tehsildar Bhattiyat the matter was heard in all fairness and as per the Annexure R-2/D enclosed for the perusal of Hon'ble Court., all the process were performed in fair and impartial manner. Hence, the objection of intentionally causing loss to Petitioner is denied.

Para No. 7

That the contents of para 7- are wrong and incorrect hence denied. It is submitted that the counting of Postal Ballot Papers on the counting day 20.12.2012, all the counting process were held in the presence of petitioner and

Form 13-A were taken firstly in prima facie scrutiny of Postal Ballot Papers. 100-Postal Ballot papers were found invalid. So, they were not counted and Put in the Record because total 697 Postal Ballot Papers were received from employees on the duty and armed forces voters after that 597 were found valid and counted, hence, 14 Postal Ballot papers were rejected after proper enquiry and with the consent and knowledge of all the candidates, election agents whosever were present there. Further reverification was also conducted at that day and the petitioner and respondent No.1 were both present there.

The acknowledgment of contesting candidates affixed their signatures of all those present is enclosed as annexure R2/E and R2/F for perusal of Hon'ble Court.

Para No. 8

That the contents of Para no.8 of the petition are admitted to the extent of raising objections however it is submitted that those objections were decided on the same day as per procedure of law vide order dated 20.12.2012, Annexure-R2/G, R2/G/Typed, R2/H, R2/H/typed, R2/1 and R2/1/typed.

So, keeping in view the above stated order passed by Returning Officer it is absolutely incorrect to say that the replying respondents had passed the order without giving a proper and fair hearing.

Objection raised by Petitioner, about 18 Polling Booths which are found without SMOS (Sr. No.) is not clear that what question has been raised by the Petitioner, that the Para No.8 is incorrect and hence denied. Because the Petitioner and their Election Agents were Personally present there and every process are duly signed by the candidate. The order has been passed out with the consultation of Petitioner has been duly acknowledged by the candidate and their Election Agents by Annexure: R2/1.

Para No. 9

The contents of Para 9 are admitted to the extent of raising objections by the petitioner with respect of counting process of EVM and postal Ballot Paper moreover with regard to above objections the replying respondents on the same day has written to the Principle Secretary of Election Commission of India vide Annexure R2/C and R2/F. The counting process of Postal Ballot Paper, EVMs conducted as per the Returning Officer Handbook Para 14.1 to 14.133. Objection accepted because the letter of discrepancy in 92-Kamla with the finding of observer and detailed report of Returning Officer/Assistant Returning Officer and Polling Party member has been sent same day on 04.11.2012 for further direction of Election Commission of India. But, no reply was received at the State Headquarter, District Head Quarter or Returning Officers office at Bhattiyat till 20th December 2012 i.e. day of counting. The result was declared with prior permission of Election Commission of India on dated 20.12.2012. There is no illegal reception of result from the Returning Officer Respondent No.2 because all the objection raised by the Petitioner were discussed and declared in the counting Hall on the same day on 20.12.2012 in the presence of the Petitioner and their Agents and Counting Observer. As mentioned in Para the Re Polling in the Polling Station 92 can be declared by the election commission of India and

Returning Officer has no power for conduct of repoll. The Election Commission of India was appraised of all the fact and circumstances of the present case and it was left to the prerogative of Election Commission of India to decide. Hence, no such kind of order was received from the Observer or Election Commission of India. So, repoll could not be conducted as the permission from Election Commission of India was not received till 20/12/2012 and the direction for declaration of result were received vide fax no.011237117057 at 6.56 pm on dated 20.12.2012 no.470/HP-LA/2012 dated 20.12.2012 as Annexure R2/J. Hence the content of rest of Para is denied.

Para No. 10

The content of Para 10 are admitted to the extent that the matter was also reported to respondent No.3 Election Commission of India through District Election Officer (DC) Chamba but, in this regard it is submitted that no direction pertaining to repelling in Polling Station 92-was received to replying respondent however the respondent no.3 dated 20.12.2012, Returning Officer has declared the result of 5-Bhattiyat Assembly Constituency. However the remaining part of the Para ibid as pertains to respondent No.3 hence these contents are denied for want of knowledge.

In contents of this Para the General Observer has sent the report to the Election Commission of India no report whatsoever were received from the Polling Station, moreover no objection were receive of tampering in the EVM used in Polling Stations and no bogus voting take place. The objection raised by the Petitioner was decided after proper inquiry and relevant facts study and the case of difference of votes in 92 Kamla was referred to the Election Commission of India respondent No.3. But, no any direction has been received from the Election Commission of India through District Election Officer, Chief Electoral Officer Shimla Himachal Pradesh regarding the letter on dated 04..11.2012 by the Returning Officer for further directions.

Para No. 11.

The contents of Para no.11 are wrong and incorrect hence denied. However, with regard to counting of Postal Ballot Papers. It is submitted that the difference between the Postal Ballot Papers is 100 Postal Ballot Paper were declared invalid during first checking as the Form 13-A declaration which is to be signed by the elector were not found in the envelopes. Inadvertently the 100 Postal Ballot were rejected as invalid for want of declaration (Form-13A), prima facie were not counted in Form-20, which leads to the difference of 100 votes in the final result sheet. This error is merely clerical but it has to be admitted that no malice was involved and the whole counting process was in conformity with the election rules and Handbook for Returning Officers. Total counted Ballot Paper were 597 of which 14 Postal Ballot Papers rejected due to marking or any other reason.

Para 12.

The contents of Para no.12 are wrong and hence denied. That the para contains the Postal Ballot paper detail, as mentioned in the Petition Annexure 13, 7, 14. It is clarified that there were 59 votes which can be identified as Armed Forces Votes and other 638 votes were received through the Local Employees deputed in Election Duty total counted votes are 638+59=697. Hence the counted

votes are correct as the returned undelivered postal Ballot Paper totals in number are 297. Those Ballot Papers are received back through Post Office the addressee has not received. Their Postal Ballot Papers are put up in to the record of the officer sealed in the treasury in contents-as mentioned only 527 votes are counted is false and hence denied because the counted votes are 597 and not 527 as mentioned in the Petition. As in the context the rejection of votes is 14 in number in the presence of replying respondent no.2, Petitioner has duly signed the reverification proceeding.

In the matter of Pradhan Gram Panchayat Kamla nothing to say, because, this statement was given in the presence of sector officer, General Observer, Polling Party official and in the presence of Polling Agents of all contesting candidates. In this matter as mentioned in para about unilateral decision without affording any opportunity to the petitioner is denied because all the Case regarding 92 Kamla Polling Station was sent to the higher authority i.e. Election Commission of India and after due procedure the decisions of declaration of the counting result was decided. Hence the content are denied.

13. The grounds of challenge pressed into service by the petitioner vide para 13(i) to (vii) have been met with by respondent No.2 in the corresponding para of the reply, as follows:—

“Para 13.

The content of Para 13 are not to be correct hence denied. Because all the relevant facts, objections, Act and rules have been taken into consideration and of the petitioner and all the contesting candidates of Vidhan Sabha election of Bhattiyat assembly constituency. All the process of election were held in the presence of election agents, polling agents, counting agents of various candidates contesting the Vidhan Sabha election 2012, and all the matter were also in the notice of contesting candidates regarding 92 Kamla Polling Station and also in the notice of election commission of India. Contents of Para 13(i)

All the matter regarding polling station number 92 Kamla and double voting by a voter were sent to the district election officer (DC) Chamba, General Observer, and to the Election Commission of India vide this office letter no.SDM/05/BHT-VS-GEN-Election/2012-3513-15 dated 4-11-2012.

Para 13 (ii)

The matter of objection raised by the petitioner on the dated 20-12-2012 were also sent to the Election Commission of India for further directions and the result was declared after due course and prior permission of Election Commission of India vide letter number 470/HPLA/ 20-12 ELECTION COMMISSION OF INDIA BY FAX MESSAGE by 01123717057 at 6:56 pm addressed to the Returning Officer (SDM) Bhattiyat. And the result was declared after the prior permission of ECI in the presence of petitioner. Hence objection denied.

PARA 13(iii)

There was no connivance with any candidate including respondent number 1 Sh. Bikram Singh Jaryal and the process of the polling were held in the presence of the polling agents of all political parties, candidates, and all the counting process were held in the presence of counting agents of all the candidates including the petitioners.

There was no malafide tension or connivance with any candidate all the objection raised by the petitioner were decided with discussion and proper satisfaction of all the candidates and the petitioner was satisfied at that time in the counting Hall on day 20/12/2012.

PARA 13 (iv)

The contents of Para has been already clarified in the reply of para number 11. In the context of annexure P15/1 to 15/8 the certificate issued by the Pradhan Gram Panchayat Kamla and the view of all the polling party member of 92 Kamla, all the polling process was also in the notice of petitioner through his polling agent who was present at that time in the polling station 92 Kamla and also signed the statement of Pradhan GP Kamla and it is understood that the matter was also in the knowledge of petitioner and the candidates contesting Vidhan Sabha election.

Para 13 (v)

Para accepted, but the statement of Pradhan Gram Panchayat Kamla is supporting document of the facts and not interrupting in the process of election the Pradhan was eye witness of all episode happens in the polling station.

Para 13 (vi)

In this regard it has to be clarified that no any connivance with any candidate and all the decision were taken at the time of counting were discussed with high authorities and also with the petitioner there are the sign of petitioner in the reverificaion of Postal ballot papers counting and the discussion and process is in the video recording held at that day for further eye witness if required by the honorable court. All the process has took place in the fearless, non partial and clear manner. There was no any kind of connivance with any candidate hence the objection of partial manner has been denied.”

14. A short reply has been filed on behalf of respondent No.3, Election Commission of India, seeking its deletion besides that of respondent No.2, the Returning Officer, from the array of respondents, being against the provisions of Section 82 of the 1951 Act, by placing reliance upon, **(1) Jyoti Basu and others vs. Debi Ghosal and others**, (1982) 1 Supreme Court Cases 691, **(2) B. Sundara Rami Reddy vs. Election Commission of India & Ors.**, 1991 Supp. (2) SCC 624 and **(3) Michael Fernandes vs. C.K. Jaffar Sharief and others**, AIR 2002 Supreme Court 1041.

15. In the rejoinders, the petitioner has refuted the respective stands on behalf of the respondents and instead reiterated the averments set up in the petition.

16. On the pleadings on behalf of the parties, the following issues have been settled, out of which issues No.2 to 5 have been ordered to be treated as preliminary issues, as already noticed:-

- (1) Whether the election of respondent No.1 has been materially affected because of illegal reception of void votes in his favour and non-counting of valid votes in favour of the petitioner in violation of Section 100(d) (iii) of the Representation of the People Act, 1951 and if so, its effect?.... OPP.**
- (2) Whether the election petition is liable to be dismissed in limine for lack of material facts and particulars, as alleged?OPR-1.**

- (3) **Whether the election petition is not maintainable for want of any cause of action, as alleged?OPR-1.**
- (4) **Whether the election petition and the accompanying annexures have not been verified in accordance with law and if so, its effect?OPR-1.**
- (5) **Whether the election petition is bad for mis-joinder of parties and is liable to be dismissed on this count?.....OPR-1.**
- (6) **Relief.**

17. I have heard the learned counsel/senior counsel/Additional Advocate General assisted by Deputy Advocate General and Assistant Solicitor General of India for the parties and gone through the records.

18. The parties have relied upon the following authorities:—

RESPONDENT No.1

1. **Parkash Chand v. State of Punjab and others**, 1977 Punjab Law Reporter 84 (paras 11 and 12);
2. **Jyoti Basu and others v. Debi Ghosal and others**, 1982 (1) SCC 691;
3. **Azhar Hussain v. Rajiv Gandhi**, AIR 1986 Supreme Court 1253 (paras 4 and 9 to 11);
4. **Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi**, AIR 1987 Supreme Court 1577 (paras 8 and 18);
5. **Shri Satyanarain Dudhani v. Uday Kumar Singh and others**, AIR 1993 Supreme Court 367 (paras 3 and 6 to 11);
6. **Smt. Mewa Devi v. The Civil Judge (Junior Division), Narwana, Distt. Jind. and others**, 1998 (1) Punjab Law Reporter 788;
7. **Smt. Vimla Devi v. State of Himachal Pradesh and others**, AIR 1999 Himachal Pradesh 38 (para 3);
8. **Mahendra Pal v. Shri Ram Dass Malanger & Ors.**, JT 2002 (2) SC 396 (paras 9 to 14);
9. **Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao & Ors.**, AIR 2010 SC 24 (paras 15 and 16);
10. **Ashok Mahadeo Mankar v. Rajendera Bhausaheb Mulak**, (2012) 12 SCC 27;
11. **Ashok S/o Mahadeorao Mankar v. Rajendera Bhausaheb Mulak AND Anil S/o Madhukarrao Sole v. Rajendera Bhausaheb Mulak and Ashok S/o Mahadeorao Mankar**, MANU/MH/0858/2010: 2010(5) Bom CR 104 (Election Petition Nos. 1 and 2 of 2010, decided by the High Court of Bombay (Nagpur Bench) on 02.08.2010).

RESPONDENT No. 3

- (1) **Jyoti Basu and others vs. Debi Ghosal and others**, (1982) 1 Supreme Court Cases 691;
- (2) **B. Sundara Rami Reddy vs. Election Commission of India & Ors.**, 1991 Supp. (2) SCC 624;
- (3) **Michael Fernandes vs. C.K. Jaffar Sharief and others**, AIR 2002 Supreme Court 1041.

PETITIONER

1. **Dudh Nath Pandey (Dead) by LRs v. Suresh Chandra Bhattasali (Dead) by LRs**, (1986) 3 SCC 360 (para 6);
2. **State of Karnataka v. Shree Rameshwara Rice Mills, Thirthahalli and State of Karnataka v. K. Krishnappa Naidu and Co. and The Executive Engineer, Thungabhadra Reservoir Division, Munirabad and another v. S. Thippa Reddy**, AIR 1987 Supreme Court 1359 (paras 7 and 8).
3. **V.S. Achuthanandan v. P.J. Francis and another**, (1999) 3 SCC 737 (paras 15 and 16);
4. **Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra and others**, AIR 2000 Delhi 349 (Head Notes A and B)
5. **Shalimar Chemical Works Ltd. v. Surender Oil and Dal Mills & others**, AIR 2001 Andhra Pradesh 126 (Head Note-B) ;
6. **Charanjit Lal Mehra & Ors. v. Smt. Kamal Saroj Mahajan & Anr**, 2005 (2) Civil Court Cases 503 (S.C.) (para 8);
7. **K.K. Ramachandran Master v. M.V. Sreyamakumar and others**, (2010) 7 Supreme Court Cases 428 (Head Note C);
8. **Karam Kapathi & Ors. V. M/s Lal Chand Public Charitable Trust & Anr.**, AIR 2010 Supreme Court 2077 (paras 48 and 49);
9. **Nandiesha Reddy v. Kavitha Mahesh**, (2011) 7 Supreme Court cases 721 (Head Note E) (para 39);
10. **Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others**, (2012) 7 Supreme Court cases 788 (paras 16 to 18);
11. **A.V.M. Sales Corporation v. M/s Anuradha Chemicals Pvt. Ltd.**, 2012 (1) Civil Court Cases 643 (S.C.) (para 8);

19. The principles of law laid down in the above authorities have been taken into consideration and borne in mind and shall be referred to wherever necessary.

20. For the sake of convenience, preliminary issues No.2 and 3, being interconnected requiring common appreciation of pleadings and law, are taken up together for discussion and decision first.

21. The law relating to 'material facts' and 'full particulars of any corrupt practice' referred to in clauses (a) and (b) of sub section (1) of Section 83 of the 1951 Act, has been succinctly crystallized by the Hon'ble Apex Court in **Virender Nath Gautam vs. Satpal Singh and others**, (2007) 3 Supreme Court Cases 617, a case arising out of the final judgment and order dated 20.12.2004 of this court in Election Petition No. 2 of 2003, laying down as under vide paras 25 to 36 and 50:—

“25. Before we deal with the contentions of the parties, it would be appropriate if we refer to the relevant provisions of the Act. The Preamble of the Act declares that the Act has been enacted

"to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections".

26. Part I is Preliminary. Part II deals with qualifications and disqualifications for membership of Parliament and of State Legislatures. While Part III provides for issuance of notifications for elections, Part IV relates to administrative machinery for the conduct of elections. Sections 59 and 60 lay down manner and procedure of voting. Section 61 prescribes special procedure for preventing personation of electors. Section 62 relates to right to vote. It is a material provision and may be quoted in extenso;

“62. Right to vote.-(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for the constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police;

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

(6) Nothing contained in sub-sections (3) and (4) shall apply to a person who has been authorized to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.”

27. Conduct of elections has been dealt with in Part V. Part VI relates to 'Disputes regarding elections'. Section 80 requires any election to be questioned only by way of Election Petition. Under Section 80A, it is the High Court which can try election petitions. Section 81 provides for presentation of election petition and prescribes the period of limitation. Section 82 declares as to who shall be joined as respondents to such Election Petition. Section 83 deals with contents of petition and reads thus—

“83. Contents of petition-(1) An Election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;**
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and**
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:**

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

28. Section 100 enumerates grounds for declaring election to be void which inter alia includes improper reception, refusal or ejection of any vote or the reception of any vote which is void or there is non-compliance with the provisions of the Constitution or of the Act or Rules or orders made under the Act. Section 101 empowers the High Court to declare a candidate other than the returned candidate to have been elected. Section 123 declares certain practices as "deemed to be corrupt practices".

29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of 'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic',

'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

32. In the leading case of *Phillips v. Phillips*, (1878) 4 QBD 127 : 48 LJ QB 135, Cotton, L.J. stated:

"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

33. In *Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697 : (1936) 1 All ER 287, Scott, L.J. referring to *Phillips v. Phillips* observed: (ALL ER p. 294)

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4 (see *Phillips v. Phillips*); or 'a further and better statement of claim' may be ordered under Rule 7."

34. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

36. In *Halsbury's Laws of England*, (4th edn.); Vol.36; para 38, it has been stated;

"38. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of

the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at the trial without obtaining the leave of the court."

50. There is distinction between *facta probanda* (the facts required to be proved, i.e. material facts) and *facta probantia* (the facts by means of which they are proved, i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

22. To the similar effect is the following dictum of law laid down by the Hon'ble Supreme Court in **Hari Shanker Jain vs. Sonia Gandhi**, (2001) 8 Supreme Court Cases 233, vide para 23 of the report:-

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See *Samant N. Balakrishna, etc. v. George Fernandez*, (1969) 3 SCR 603; *Jitender Bahadur Singh v. Krishna Behari*, (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis*, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

23. The above interpretation of 'material facts' and 'full particulars of any corrupt practice' has also been reiterated in later judgments rendered by the Hon'ble Supreme Court in (1) **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar**, (2009) 9 Supreme Court Cases 310, (2) **K.K. Ramchandran Master vs. M.V. Sreyamakumar and others**, (2010) 7 Supreme Court Cases 428, (3) **Nandiesha Reddy vs. Kavitha Mahesh**, (2011) 7 Supreme Court Cases 721 and (4) **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and others**, (2012) 7 Supreme Court Cases 788.

24. It is settled that material facts are primary facts, in absence whereof the petition would be rendered without disclosing any cause of action and thus liable to be struck off under Order VI, Rule 16 CPC. It is also settled that if full particulars are lacking the petition can be amended and amplified, but cannot be dismissed.

25. Be it stated at the very outset that there being no allegation of commission of any 'corrupt practice' within the meaning of Section 123 of the 1951 Act and in the absence of any other ground except the one covered under Section 100 (1) (d) (iii) of the Act *ibid*, which is reproduced below for ready reference, the challenge to the election of respondent No.1, by the petitioner, runner up candidate has necessarily to be confined to that extent:—

“(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or”

26. An election petitioner can be successful under any of the clauses (i) to (iv) of Section 100 (1) (d) in case it is made out that the result of the election, insofar as it concerns the returned candidate, has been materially affected.

27. The “violations” alleged by the petitioner during polling and counting of votes can be grouped in the following three categories, which shall be dealt with one by one:—

I. Exercise of dual right of franchise by a voter and discrepancy between the EVM record and the record maintained in Form 17-A at polling station No. 92- Kamla;

II. Improper reception of 30 postal ballot papers; and

III. Discrepancy regarding 100 postal ballot papers whether 597 or 697?

I. Exercise of dual right of franchise by a voter and discrepancy between the EVMs record and the record maintained in Form 17-A at polling station No. 92-Kamla;

28. True it is that in our democratic polity we have adopted the principle of single adult franchise. It being so, every eligible voter has only one vote and in case (s)he exercises dual right of franchise in an election, in the same constituency, both the votes cast by her/him would be rendered invalid under sub section (4) of Section 62 of the 1951 Act. Indisputably on the polling day a voter had exercised dual right of franchise at polling station No. 92-Kamla, which appears to be an inadvertent and insignificant mistake committed by that voter and the concerned official(s) of the polling party, which stands duly explained on behalf of respondent No.2 in his reply supported by documentary evidence in the form of Annexures P-15/1 to P-15/8. This discrepancy was also brought to the notice of respondent No.3, Election Commission of India. It is also not in dispute that both the votes cast by that voter at Sr. Nos. 229 and 230 were counted at the time of counting of votes. However, there is no allegation in the petition that the exercise of dual right of franchise by the aforesaid voter was in favour of respondent No.1, the returned candidate, who instead has alleged that the said voter was a supporter of the petitioner. To this extent the petition lacks in material facts. However, in any case, even if it is assumed for a moment for the sake of argument that the exercise of dual right of franchise by the aforesaid voter was in favour of the petitioner and both these votes are taken out of consideration, his winning margin would come down from 111 to 109. It being so, the result of the election, insofar as it concerns respondent No.1, the returned candidate, cannot be said to have been materially affected owing to this insignificant discrepancy. Please see (1) **Parkash Chand v. State of Punjab and others**, *supra* (paras 11 and 12), (2) **Mahendra Pal v. Shri Ram Dass Malanger & Ors.**, *supra* (paras 9 to 14), (3) **Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao & Ors**, *supra* (paras 15 and 16), (4) **Smt. Vimla Devi v. State of Himachal Pradesh and others**, *supra* (para 13) and (5) **Smt. Mewa Devi v. The Civil Judge (Junior Division), Narwana, Distt. Jind and others**, *supra* (para 3).

29. The contention on behalf of the petitioner that the entire polling in respect of polling station No. 92-Kamla was required to be annulled on this ground cannot be taken into consideration being without any merit, whatsoever. Reliance placed on behalf of the petitioner in this regard on copy of fax, Annexure P-9, whereby the Election Commission had ordered fresh poll in a polling station of 18-Amritsar East Assembly Constituency during 2012 assembly poll in the State of Punjab, cannot be taken into consideration for want of the reasons owing to which poll was cancelled in that polling station and re-polling ordered, which are not explicit in the copy of fax, Annexure P-9.

30. Another discrepancy pointed out by the petitioner is regarding the number of total votes at polling station No. 92-Kamla, which as per Annexure P-4 have been shown as 659, but in Annexure P-4/1 at page 36 is stated to be 651. This discrepancy again is of no significance in the peculiar facts and circumstances of the case for the simple reason that whatever may be the total number of votes, the fact remains that only 518 votes were polled at that station, which were ultimately taken into consideration at the time of counting of votes held on 20.12.2012. Furthermore, respondent No.2 has categorically stated as under vide para 5 of his reply:—

“As per the Annexure of Petition- P/4 and P4/1 form 17C filled by the Presiding Officer is wrong because the total voters according to the Electoral Roll complete with supplements are 651 and not 659 as mentioned in the Form 17-C. This assertion is therefore, admitted.”

II. Improper reception of 30 postal ballot papers.

31. Complaints Annexure P-6 and P-8 were submitted by the petitioner to respondent No.2, the Returning Officer, raising objection to the counting process alleging improper reception of 30 postal ballots. Whereas complaint Annexure P-6 was disposed of vide order Annexure P-7, orders were passed on complaint Annexure P-8 on itself. The record reveals that consequent upon objections raised by the petitioner and other candidates re-verification of postal ballots was carried out, outcome whereof is reflected in fax dated 20.12.2012, forming part of Annexure P-3 at page 27, text whereof is as under:—

“Through Fax
No. Endst : SDM/BHT/ELN/VS/Count-2012
Returning Officer 05 Bhattiyat, District Chamba HP

To

Sh. Shangara Ram (Principal Sect)
ECI, Ashoka Road, Delhi

Dated Bhattiyat 20.12.2012

Subject: **Regarding re-verification of Postal Ballot.**

Sir,

In connection to the earlier reference forwarded by the undersigned, it is informed that re-verification of Postal ballots was done by following due procedure. The entire process has been videographed and proceeding thereof is also drawn. During the re-verification objections were raised by different candidates on the validity of 37 postal ballots out of which 12 were found valid and 7 were found invalid. 18 declaration forms (13-A) were detected without serial number of the postal ballots in declaration from, which cannot be declared invalid as at this stage it cannot be ascertained to whom these postal ballots are belonged.

After the completion of re-verification of the PB's the tally of votes gained by the contesting candidates are as follows:

Sr. No.	Name of the Candidate	Party Affiliation	No of votes polled
1	BIKRAM SINGH JARYAL	BJP	18100-2=18098
2	KULDEEP SINGH PATHANIA	INC	17989-2=17987

As such the margin between top two candidates is still 111. As regards the 18 sustained objections on declaration forms, even if all of these are counted in favour of the runners up candidate still it does not affect the final result. Hence, declaration of result may kindly be allowed.

Thanking you,

Encl: 1. Proceeding of re-verification.

Sd/-
Returning Officer
5-Bhattiyat
Distt. Chamba (HP)"

32. Thus, it is manifest that during re-verification objections were raised by different candidates on the validity of 37 postal ballots, out of which 12 were found valid and 7 invalid. As regards the remaining 18 declaration Forms (13-A), respondent No.2, the Returning Officer, came to the following conclusions:—

“18 declaration forms (13-A) were detected without serial number of the postal ballots in declaration from, which cannot be declared invalid as at this stage it cannot be ascertained to whom these postal ballots are belonged.”

“As such the margin between top two candidates is still 111. As regards the 18 sustained objections on declaration forms, even if all of these are counted in favour of the runners up candidate still it does not affect the final result. Hence, declaration of result may kindly be allowed.”

33. A perusal of the aforesaid fax dated 20.12.2012 reveals that on re-verification of postal ballots there was loss of two votes each to the petitioner and respondent No.1.

34. Thus, on the one hand, even if the aforesaid 18 disputed postal ballots were taken out of consideration, it would not have materially affected the election result, as even in that eventuality the wining margin of the petitioner would have been $111-2-18=91$, on the other it would be seen again that in the entire petition there is no averment that improper reception of postal ballots alleged by the petitioner vide complaint Annexure P-6 was in favour of respondent No.1, the returned candidate. The petition, to this extent, lacks in material facts. Furthermore, the averments set up by the petitioner vide paras 7 and 9 of the petition in support of the alleged “violations” covered under categories I and II, even as per his own reckoning, are based on mere suspicion, which cannot take place of proof.

III. Discrepancy regarding 100 postal ballot papers- whether 597 or 697?

35. In order to resolve the controversy whether there were 697 or 597 postal ballots, it shall be relevant to once again notice the reply filed by respondent No.2, the Returning Officer, vide para 11 and relevant portion of para 12, which are as follows:—

Para No.11.

“The contents of Para no.11 are wrong and incorrect hence denied. However, with regard to counting of Postal Ballot Papers. It is submitted that the difference between the Postal Ballot Papers is 100 Postal Ballot Paper were declared invalid during first checking as the Form 13-A declaration which is to be signed by the elector were not found in the envelopes. Inadvertently the 100 Postal Ballot were rejected as invalid for want of declaration (Form-13A), prima facie were not counted in Form-20, which leads to the difference of 100 votes in the final result sheet. This error is merely clerical but it has to be admitted that no malice was involved and the whole counting process was in conformity with the election rules and Handbook for Returning Officers. Total counted Ballot Paper were 597 of which 14 Postal Ballot Papers rejected due to marking or any other reason.” Relevant portion of Para 12

“The contents of Para no.12 are wrong and hence denied. That the para contains the Postal Ballot paper detail, as mentioned in the Petition Annexure 13, 7, 14. It is clarified that there were 59 votes which can be identified as Armed Forces Votes and other 638 votes were received through the Local Employees deputed in Election Duty total counted votes are 638+59=697. Hence the counted votes are correct as the returned undelivered postal Ballot Paper totals in number are 297. Those Ballot Papers are received back through Post Office the addressee has not received. Their Postal Ballot Papers are put up in to the record of the officer sealed in the treasury in contents-as mentioned only 527 votes are counted is false and hence denied because the counted votes are 597 and not 527 as mentioned in the Petition. As in the context the rejection of votes is 14 in number in the presence of replying respondent no.2, Petitioner has duly signed the reverification proceeding.”

36. Though the above averments are not very happily worded, yet the fact remains that 100 postal ballots were declared invalid during the first checking as Form 13-A declaration which is to be signed by the elector was not found in the respective envelopes containing those ballot papers. According to respondent No.2, the Returning Officer, those 100 postal ballots, which were rejected as invalid for want of declaration in Form 13-A, inadvertently could not be shown in the relevant column of Form 20 (Annexure P-12) at page 54 against the entry ‘Postal Ballot’. A complete and harmonious reading of Annexures P-10 to P-14 also makes this aspect of the matter quite clear leaving no room for any doubt, whatsoever. Thus, it is crystal clear that after rejection of 100 postal ballots during the first checking only 597 postal ballots were left for counting. The slight difference between the total number of postal ballots received from ‘Civilian’ employees as shown in respective column No. 10 of Annexure P-10 as 638 and Annexure P-13 as 633 also stands explained satisfactorily from the entry contained in column No. 9 of annexure P-10 as “633+5 {from Chamba I in ballot box on counting day }”. Since 59 postal ballots were received from ‘Service Electors’, the total number of postal ballots comes to 697 (638 + 59), out of which 100 postal ballots were rejected during the first checking, leaving only 597 postal ballots for counting.

37. Above all the fact remains that no such objection was raised by the petitioner at the time of mandatory re-verification of postal ballots, as is apparent from fax message dated 20.12.2012, which forms part of Annexure P-3 at page 27, complaint Annexure P-6 and order Annexure P-7 passed thereon, complaint Annexure P-8 and the order passed thereon itself, proceedings of the ‘Postal ballot – reverification’, Annexure P-11 and even at the time of declaration of result vide Annexure P-3.

38. The above discussion brings me to hold that the petition which is solely based on Section 100 (1) (d) (iii) of the 1951 Act is lacking in material facts and does not disclose any cause of action and is accordingly liable to be dismissed without being put to trial.

39. The contention raised by the learned counsel for the petitioner that since the discrepancies connected with the alleged “violations” falling under the aforesaid three categories I to III stand categorically admitted by respondent No.2, the Returning Officer, judgment is required to be passed in favour of the petitioner straightway keeping in view the law laid down in (1) **Charanjit Lal Mehra & Ors. vs. Smt. Kamal Saroj Mahajan & Anr.**, (para 8) (supra), (2) **Karam Kapahi & Ors. v. M/s Lal Chand Public Charitable Trust & Anr.**, (paras 48 and 49) supra, (3) **Parivar Seva Sansthan vs. Dr. (Mrs.) Veena Kalra and others**, supra (Head Notes A & B) (paras 9, 10 and 13) and (4) **Dudh Nath Pandey (Dead) by LRs v. Suresh Chandra Bhattasali (Dead) by LRs**, supra (para 6) , is on the face of it fallacious and does not deserve any consideration for the reason that on the one hand the alleged admissions cannot at all be characterized as ‘admissions’ and on the other all these aspects of the matter stand already dealt with here-in-above in this judgment.

40. Accordingly issue Nos. 2 and 3 are decided in affirmative.

Issue No. 4

41. Verification of pleadings is governed under Order 6, Rule

15 CPC, which reads as under:—

“15. Verification of pleadings

- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be varied at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.
- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.
- 1[(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.]”

42. The petition has been verified as under:—

“VERIFICATION

Verified that the contents of paras 1 to 3, 10, 12 and 17 of the petition are true and correct to the best of my personal knowledge whereas the contents of paras 4 to 9, 11 and 18 of the petition are true and correct to the best of my knowledge derived from the official records of election to 5-Bhattiyat Assembly Constituency which I believe to be true and contents of paras 13 to 16 of the petition are true on the basis of the legal advice received which I believe to be true. No part of it is false and nothing has been concealed therein. Verified at Shimla this the 28th day of January, 2013.”

43. The above verification on the face of it is in accordance with Order 6, Rule 15 CPC. Annexures P-1 to P15/8 and typed copies of Annexures P-3/1, P-5 to P-8 and P-14/1 to P-15/6 have

also been attested/certified to be true copies according to law. Even otherwise defective verification or affidavit is curable and petition cannot be dismissed for any such defect and consequences, if any, such defect(s) entail would be adjudged at the trial, as has been held by the Hon'ble Apex Court in **K.K. Ramchandran Master vs. M.V. Sreyamakumar and Others**, supra (para 15).

44. The issue is accordingly decided in negative.

Issue No. 5.

45. Section 82 of the 1951 Act, which deals with 'Parties to the petition' reads as under:-

“[82. Parties to the petition.-A petitioner shall join as respondents to his petition—

- (a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.]”

46. A bare reading of Section 82 *ibid* makes it abundantly clear that except the candidate(s) contesting the election, returned candidate(s) and any other candidate against whom allegations of any corrupt practice are made in the petition, no other person can be joined as a party to an election petition contemplated under Chapter II of the 1951 Act beginning with Section 80. In view of the settled legal position emanating from the law laid down by the Hon'ble Supreme Court in (1) **Jyoti Basu and others vs. Debi Ghosal and others** (supra), (2) **B. Sundara Rami Reddy vs. Election Commission of India & Ors.** (supra) and (3) **Michael Fernandes vs. C.K. Jaffar Sharief and others** (supra), respondents No.2, the Returning Officer and 3, Election Commission of India, are neither necessary nor proper parties to the petition and are as such liable to be struck off from the array of respondents. Ordered accordingly. However, the petition cannot be dismissed only on this count.

47. The issue is decided accordingly.

48. In view of the above findings on issues No. 2 and 3, the petition is held to be lacking in material facts as required under Section 83 (1) (a) of the 1951 Act and as such does not disclose any cause of action and is accordingly dismissed with costs of ₹25,000/- (rupees Twenty Five thousand), payable by the petitioner to respondent No.1.

49. Let follow up action in terms of Section 103 of the Representation of People Act, 1951, read with Rule 28 of the 'Rules of Procedure and Guidance in the matters of trial of Election Petitions under Part-VI of the Representation of People Act, 1951' as amended, contained in Appendix-II to 'the High Court of Himachal Pradesh Original Side Rules, 1997', be taken by the Registry forthwith.

(V. K. SHARMA),
Judge.

“NAGAR PANCHAYAT SUNNI PLASTIC WASTE (MANAGEMENT AND HANDLING) BYE-LAWS, 2014.”

NOTIFICATION

Sunni, the 6th August, 2014

No. NP Sunni/2014-299.—In compliance to the Hon’ble High Court order dated 26-12 2013 passed in CWP No. 1732/2010 along with other CWPs, the following Plastic Waste byelaws, 2014 made by the Nagar Panchayat in exercise of the power conferred by Section 217 and Section 219 read with Clause d) (v) of sub section (1) of Section 202 of the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) as amended from time to time are hereby published in the Rajpatra, Himachal Pradesh (extraordinary) for the information of general public and notice is hereby given that the said draft bye-laws shall be considered by the Nagar Panchayat after expiry of a period of 15 days from the date of its publication in the Rajpatra, Himachal Pradesh.

If any person, likely to be affected by these draft bye-laws has any, objection(s) against these draft rules, he may sent the written objections to the Secretary of concerned ULB, within the aforesaid period.

Objections, if any, received within the period as specified above, shall be taken into consideration by the MC/NP before finalizing these Bye-Laws namely:—

“Nagar Panchayat Sunni (Management and Handling) of Plastic Waste Bye-laws, 2014.”

Preliminary

1. Short title, commencement and application.—(i) These Bye-Laws may be called, “Nagar Panchayat Sunni Plastic Waste (Management and Handling) Bye-laws, 2014.”

(ii) These Bye-laws shall come into force from the date of their publication in the Rajpatra (extraordinary) Himachal Pradesh.

(iii) These Bye-laws shall be applicable within the jurisdiction of NP Sunni as defined from time to time.

2. Definitions.—(1) In these Bye-laws, unless the context otherwise requires:—

- (a) “**Act**” means the H.P. Municipal Act, 1994 (13 of 1994) and Environment (Protection) Act, 1986 (29 of 1986);
- (b) “**Authorized Officer**” means any officer/official duly authorized by the Municipality under these Bye-laws;
- (c) “**Carry bags**” means all plastic bags used to carry commodities, including self carrying features;
- (d) “**Compostable plastics**” means plastic that undergoes degradation by biological processes during composting to yield CO₂, water, inorganic compounds and biomass at a rate consistent with other known compostable materials and does not leave visible, distinguishable or toxic residue;
- (e) “**Disintegration**” means the physical breakdown of a material into very small fragments;

- (f) **“Extended Producer’s Responsibility (EPR)”** means the responsibility of a producer or a manufacturer of plastic carry bags and multilayered plastics, pouches or packages for the environmentally sound management of the product until the end of its life. This responsibility also applies to all manufactures using such packaging;
- (g) **“Manufacturer”** means any producer who manufactures plastic carry bags, multilayered packing, pouches and the like or uses such materials in packing of a product;
- (h) **“Municipality”** means an institution of Self Government constituted as a Nagar Panchayat under this Act or any other local body constituted under the relevant statutes and, where the management and handling of municipal solid waste is entrusted to such agency;
- (i) **“Multilayered Plastics”** means any material having a combination of more than one layer or packing material such as paper, paper board, polymeric materials, metalised layers or aluminum foil, either in the form of a laminate or co-extruded structure;
- (j) **“Occupier”** includes any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable and also include a tenant;
- (k) **“Plastic”** means material which contain as an essential ingredient a high polymer and which at some stage in its processing into finished products can be shaped by flow;
- (l) **“Plastic waste”** means any plastic product such as carry bags, pouches or multilayered packing, which have been discarded after use or after their intended life is over;
- (m) **“Registration”** means registration of units manufacturing or recycling carry bags made of virgin or recycled plastics with the concerned State Pollution Control Board or Pollution Control Committee, as the case may be, within the jurisdiction of the Municipality;
- (n) **“Rule”** means the rules made under the H.P. Municipal Act, 1994, (13 of 1994) and Environment (Protection) Act, 1986 (29 of 1986);
- (o) **“Section” means section of the Act;**
- (p) **“Virgin Plastic”** means plastic material which has not been subjected to use earlier and has also not been blended with scrap or waste;
- (q) **“Waste management”** means the scientific reduction, re-use, recovery, recycling, composting or disposal of plastic waste;
- (r) **“Waste pickers”** means individuals or groups of individuals engaged in the collection of plastic waste.

(2) All other words and expressions used in these Bye-laws, but not defined, shall have the same meaning as are assigned them in the Act or Rules framed there under.

3. Prescribed Authority.—For enforcement of the provisions of these Bye-laws relating to the use, collection, segregation, transportation and disposal of post consumer plastic waste shall be the concerned municipality and its authorized officer/official, as the case may be.

4. Generation of Plastic Waste.—(1) The Municipality may assess the quantum of post consumer plastic waste generated through delineating high, mid and low waste generating areas within its jurisdiction and conducting waste audit in the manner as provided under Bye-Laws 9.

(2) The Municipality may ask manufacturers, distributors and other person who produce or handle commodities for plastic quantum within its jurisdiction and also with respect to type, size, labeling and composition of packaging.

5. Segregation of Plastic Waste.—(1) Municipality shall ensure post consumer plastic waste through primary or secondary segregation from the waste stream

(2) No owner or occupier of any premises shall keep or allow to be kept staking or deposits of post consumer plastic waste which is likely to occasion a nuisance or is likely to be dangerous to health and environment.

6. Plastic Waste Management Centers (PWMC).—(1) Municipality shall be responsible for setting up, operationalisation and coordination of the plastic waste management system ensuring collection, storage, transportation, treatment, disposal and for performing the associated functions, namely:-The Municipality shall establish a plastic waste management centre (PWMC) headed by its Secretary. The plastic waste management centre within the municipality will ensure that post consumer plastic waste is recovered from the waste stream.

(2) The PWMC shall ensure the identification and involvement of the waste pickers, agencies working in waste management sector and formalization of the informal post consumer plastic waste collection units within jurisdiction of the Municipality.

(3) The PWMC shall register and grant authorization to such informal post consumer plastic waste collection units within the Municipality in the format as prescribed by the municipality from time to time.

(4) The registration granted under these bye laws shall be valid for a period of one year, unless revoked suspended or cancelled; and registration shall not be revoked suspended or cancelled without providing the registered plastic waste unit an opportunity for explanation to the authority

(5) The PWMC may also establish plastic waste collection units in Municipality jurisdiction involving plastic bulk generators

(6) The PWMC may ensure such unit's channelization to authorized recyclers.

(7) The PWMC shall create awareness among all stakeholders about their responsibilities and ill effects of plastic waste;

7. Plastic Waste Recycling and Recovery.—The plastic waste management shall be as under.—

(1) Recycling, recovery or disposal of post consumer plastic waste shall be carried out as per the rules, regulations and standards stipulated by the Central Government from time to time;

(2) Recycling of plastics shall be carried out in accordance with the Indian standard: IS 14534: 1998 titled as Guidelines for Recycling of Plastics, as amended from time to time;

(3) Recyclers shall ensure that recycling facilities are in accordance with the Indian Standard: IS 14534: 1998 titled as Guidelines for Recycling of Plastic and in compliance with the rules under the Environment (Protection) Act, 1986, as amended from time to time;

(4) The Municipality shall ensure that the residues generated from recycling processes are disposed off in compliance with Schedule II (Management of Municipal Solid Wastes) and Schedule III (Specifications for Landfill Sites) of the Municipal Solid Wastes (Management and Handling) Rules, 2000 made under the Environment (Protection) Act, 1986, as amended from time to time.

8. Prohibition on Littering and Burning of Plastic Waste.—(1) No owner or occupier shall dispose-off any post consumer plastic waste to run down or to be thrown into any drain sink or any other place within municipal area except in such a manner as shall prevent any avoidable nuisance.

(2) No owner or occupier of any premises shall deposit post consumer plastic waste in any street, on the veranda of any building, any unoccupied ground along side, on the bank of a water course, any dustbin, vehicle and vessel not intended for the removal of the same.

(3) No owner or occupier of any premises shall burn the post consumer plastic waste

(4) If any corporate body, firm or other association of individuals committing offence under this section; every person who, at the time of the commission of the offence, was in-charge of the conduct of the corporate body shall be deemed to be guilty.

9. Waste Audit.—(i) The Municipality shall manage the plastic waste by undertaking waste audit in the beginning of the year.

(ii) The results of the waste audit shall be compiled and sent to the HP State Pollution Control Board / State Government.

10. Extended Producer's Responsibility.—The Municipality may ask the manufactures, either collectively or individually in line with the principle of Extended Producer's Responsibility (EPR) involving such manufactures, registered within its jurisdiction and brand owners with registered offices within its jurisdiction to provide the required finance to establish such collection centers.

11. Sustainable Use of Plastic Waste.—The Municipality shall encourage the use of plastic waste by adopting suitable technology such as road construction, co-incineration etc. The municipality or the operator intending to use such technology shall ensure the compliance with the prescribed standards including pollution norms prescribed by the competent authority in this regard.

12. Penalty.—Whosoever contravenes the provision of these Bye-laws shall be penalize as provided under the Act and the prescribed authority may request the competent authority to withdraw registration/recognition, if any, granted in his favour.

By order,
Sd./-
Secretary,
Nagar Panchayat Sunni.

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 12 अगस्त, 2014

सं0पी0बी0डब्ल्यू0(बी0)एफ—(5)25 / 2013.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु गांव जोधों, तहसील नालागढ़, जिला

सोलन, हिमाचल प्रदेश में राष्ट्रीय उच्च मार्ग -21ए पिन्जौर-बद्दी-नालागढ़-स्वारघाट को चौड़ा करने के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा, भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-7 के अधीन भू-अर्जन समाहर्ता लोक निर्माण विभाग, विन्टर फिल्ड शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद् द्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता, लोक निर्माण विभाग, विन्टर फिल्ड शिमला, हिमाचल प्रदेश के कार्यालय में किया जा सकता है।

विवरणी

जिला	तहसील	गांव	खसरा न०	रकबा (बीघा में)
सोलन	नालागढ़	जोधों	462	0-3
			463	0-1
			464	0-1
			465	0-1
			466	0-1
			109 / 1	0-14
			111 / 1	0-5
			111 / 2	0-2
			115 / 1	0-2
			477 / 1	0-10
			किता: 10	2-0

आदेश द्वारा,
हस्ताक्षरित / -
प्रधान सचिव (लोक निर्माण)।

HIGH COURT OF HIMACHAL PRADESH SHIMLA -171001

NOTIFICATION

Shimla, the 11th August, 2014

No. HHC/GAZ/ 14-320/2010.—Hon'ble the Chief Justice has been pleased to grant 04 days' earned leave *w.e.f.* 11-08-2014 to 14-08-2014 with permission to suffix gazetted holiday, local holiday and Sunday falling from 15-8-2014 to 18-8-2014 in favour of Ms. Akshi Sharma, Civil Judge (Junior Division)-cum-JMIC (II), Dehra, District Kangra, H.P.

Certified that Ms. Akshi Sharma is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Akshi Sharma would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (II), Dehra, District Kangra, H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171001**NOTIFICATION***Shimla, the 11th August, 2014*

No. HHC/Admn.6 (23)/74-XV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge (Senior Division)-cum-ACJM (I), Dehra, H.P. as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Junior Division)-cum-JMIC (II), Dehra and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court under Major Head “2014-Administration of Justice” during the earned leave period of Ms. Akshi Sharma, Civil Judge (Junior Division) -cum-JMIC (II), Dehra *w.e.f.* 11-08-2014 to 14-08-2014 with permission to suffix gazetted holiday, local holiday and Sunday falling from 15-8-2014 to 18-8-2014 or until she returns from leave.

By order,
Sd/-
Registrar General.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Ramesh Kumar s/o Shri Biru Ram, r/o Servant Quarter, Shyam Rock Bank Kothi,
Chhota Shimla, Shimla, Himachal Pradesh .. *Applicant.*

Versus

General Public

.. *Respondent.**Application under section 13 (3) of Birth and Death Registration Act, 1969.*

Whereas, Shri Ramesh Kumar s/o Shri Biru Ram, r/o Servant Quarter, Shyam Rock Bank Kothi, Chhota Shimla, Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name of his daughter, namely Poonam Kumari whose date of birth is 1-8-1982 in the record of Municipal Corporation, Shimla, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court from one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and the case will be decided accordingly.

Given under my hand and the seal of the Court on this 13th day of August, 2014.

Seal.

G. C. NEGI,
*Sub-Divisional Magistrate,
Shimla (Urban), District Shimla,
Himachal Pradesh.*